

2006

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Linda C. McClain

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Recommended Citation

Linda C. McClain, *Family Constitutions and the (New) Constitution of the Family*, 75 Fordham L. Rev. 833 (2006).

Available at: <https://ir.lawnet.fordham.edu/flr/vol75/iss2/19>

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Cover Page Footnote

Rivkin Radler Distinguished Professor of Law, Hofstra University. An earlier version of this article was presented at the Conference, A New Constitutional Order?, held at Fordham University School of Law, March 24-25, 2006. I am grateful to Jim Fleming and to participants for comments. Thanks also to my colleagues at Hofstra for instructive comments during a Faculty Workshop, and especially to Norm Silber for discussion of the corporate law issues. Thanks to Hofstra research librarian Cindie Leigh and University of Pennsylvania research librarian Ronald Day (while I was a Visiting Professor of Law at the University of Pennsylvania School of Law) for valuable help with sources. Comments are welcome: Linda.C.McClain@hofstra.edu

FAMILY CONSTITUTIONS AND THE (NEW) CONSTITUTION OF THE FAMILY

*Linda C. McClain**

A mission statement is . . . meant to be the literal constitution of your family life. And just as the United States Constitution has survived for more than two hundred sometimes turbulent years, your family constitution can be the foundational document that will unify and hold your family together for decades—even generations—to come. . . .

By creating and living by a mission statement, families are gradually able to build moral authority in the family itself. In other words, principles get built right into the very structure and culture of the family, and everyone comes to realize that principles are at the center of the family and are the key to keeping the family strong, together, and committed to its destination. Then the mission statement becomes like the Constitution of the United States—the ultimate arbiter of every law and statute. The principles upon which it is based and the value systems that flow out of those principles create a social will that is filled with moral or ethical authority.

Stephen R. Covey, *The 7 Habits of Highly Effective Families* 93, 142 (1997).

INTRODUCTION

If the United States is entering “a new constitutional order,” then what is the place of families in that order? Is it a different place than in the old constitutional order? Will the family continue to feature—in the rhetoric of constitutional law, as in broader public rhetoric about families—as a deeply rooted, fundamental social institution, a basic unit undergirding the social and political order? Familiar references to the family as a vital site for inculcating moral and cultural values and as a “seedbed of civic virtue” capture the formative role of families. Indeed, the topic for this panel,

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"Subnational Norms: Families and Civil Society," alludes to this generative role of families. Families, in our political and constitutional order, play a role in what I describe elsewhere as a formative project of creating persons who are capable of responsible personal and democratic self-government.¹ Society relies upon this formative process, but contentious questions arise about its contours. What resolution will they have in a new constitutional order?

A host of challenging questions issue from combining the general query, "Are we in a new constitutional order?," with the specific inquiry about whether and how families and other institutions of civil society are sources of "subnational norms." Some familiar questions relate to the reciprocal relationship between family and state: Families play a formative role in society, but law and society also shape families. Are the legal and constitutional norms governing families truly "subnational"? It is commonplace in constitutional law to assert that, pursuant to venerable principles of federalism, family law (or "domestic relations") is preeminently a matter for states, not the federal government.² And yet families have long been the subject, not only of state regulation, but also of federal "family law" and of federal constitutional law. The ongoing debate in Congress over whether there should be a "federal marriage protection amendment," creating one uniform definition of marriage in the United States and barring same-sex marriage, most visibly raises this tension between subnational and national family law.³

Family self-constitution, in the sense of battles over the legal definition of what counts as a family and over how federal and state constitutions bear on such definition, is likely to remain an issue in any new constitutional order and any new "constitution of the family."⁴ This article takes up an aspect of family self-constitution that has received little attention in the legal literature: constitution making by families.⁵ Of what interest is it to

1. See Linda C. McClain, *The Place of Families: Fostering Capacity, Equality, and Responsibility* (2006).

2. The U.S. Supreme Court recently articulated this point:

Long ago we observed that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." . . . [W]hile rare instances arise in which it is necessary to answer a substantial federal question that transcends or exists apart from the family law issue, . . . in general it is appropriate for the federal courts to leave delicate issues of domestic relations to the state courts.

Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 12-13 (2004) (quoting *In re Burrus*, 136 U.S. 586, 593-94 (1890)).

3. See S.J. Res. 1, 109th Cong. (2005) (as introduced, Jan. 24, 2005); H.R.J. Res. 39, 109th Cong., (2005) (as introduced, Mar. 17, 2005).

4. I allude here to Robert A. Burt, *The Constitution of the Family*, 1979 Sup. Ct. Rev. 329.

5. A search on LexisNexis and Westlaw found no scholarly legal articles discussing the topic of families drafting constitutions or family mission statements. There were some articles in state bar journals and some American Law Institute materials on the use of family mission statements by family businesses and for estate planning. See *infra* note 229 and accompanying text.

constitutional law and family law that families undertake to draft—and are urged by assorted “experts” on the family to draft—family constitutions (by analogy to the U.S. Constitution) and family mission statements (by analogy to corporate mission statements)? I contend that this is a fruitful topic of inquiry for the fields of family law and constitutional law, as well as for persons interested in the “state of the family.” For it bears on important questions both about the internal dynamics of family life and family governance and about how families, as a form of association, fit within the broader framework of associations within civil society. What norms govern family life, and how do families generate them? What relationship do norms of family life, or norms generated in families, bear to norms of political life, whether “subnational”—that is, local or state—or national?

Why do families draft family constitutions and mission statements? Why are they urged to do so? What kinds of families engage in this constitution drafting? How do families understand—and constitute—themselves as a unit with specific ends? How does such self-constitution mesh with the formative role society assigns to families? What relationship does it bear to other aspects of family self-constitution: How legal regulation of the family—in family law and constitutional law—defines the *form* that families take and sets parameters for family rights and responsibilities, roles, and governance.

This search for self-constitution by families is an apt point of departure for a consideration of the place of families and the rest of civil society in a new constitutional order. One reported impetus for families drafting family constitutions is a perception that an important relationship between families and other institutions of civil society and government is askew: Because these other institutions are no longer serving as generators or supporters of values—and are even hostile to families—families must define their own ends and values. Strikingly, this perception mirrors a conviction sounded across the political spectrum by political leaders and public intellectuals: The family, the fundamental social unit, vitally supports and undergirds the institutions of civil society and government, but in contemporary society, families are weakened and unable to play that role because those institutions undermine, rather than support, families.⁶

Another impetus for family constitution making is the premise that the family, as an organization, should structure itself as do other organizations: By analogy to how other organizations operate, the family must have a constitution or a mission statement. These analogies to the polity and to the corporation raise significant questions about the contemporary functions of families, by comparison with other institutions of civil society and with government, and about the architecture, or infrastructure, of civil society.

6. See, e.g., Hillary Rodham Clinton, *It Takes a Village: And Other Lessons Children Teach Us* (1996); Sylvia Hewlett & Cornel West, *The War Against Parents* (1998); Rick Santorum, *It Takes a Family: Conservatism and the Common Good* (2005).

What does this sort of borrowing or translation imply about families and other forms of association? What are the relationships among families and other associations in a new constitutional order?

In this Article, I argue that constitution making by families envisions a constructivist⁷ model of family, in which individual members of a family engage in a self-conscious and deliberative process of constructing the family through defining its ends and values. This constructivist model is in apparent tension with a vision of family as natural, traditional, and universal. This natural family is often an image at the core of heated debates over the family in constitutional and family law. On the one hand, one of the leading proponents of family constitution making, Stephen Covey, stresses that doing so will align families with universal and natural principles.⁸ But on the other, the notion that families, whatever their form, can be helped by forming constitutions and that each will fashion a constitution reflecting its distinct values and ends, suggests the plasticity of the idea and the diversity of family models.⁹ How might this tension between the natural and the constructivist family inform consideration in law of the formative role of families in carrying out the task of social reproduction?

I also argue that family constitution making reflects an intriguing tension between two models of social reproduction (that is, the process of preparing children to take their place as capable and responsible members of society and good citizens). Under one model, parents carry out this process by transferring their values to their children through inculcation, instruction, and example. Constitutional jurisprudence, I will explain, recognizes parental liberty to educate and socialize children (implicitly including transfer of values). Some writing about family constitutions embraces this model of value transfer. But family constitution making also expresses a second, more democratic and dialogic model of social reproduction, since it often envisions that all family members, including children, participate actively in a process of identifying family values and purposes to be written into a family constitution or mission statement. Both the tension between the natural and constructivist family and between direct value transfer and dialogic/democratic participation invite further reflection on family self-government and its relationship to the place of families in the polity.

In Part I, I explicate the case made for why families should draft constitutions and mission statements, canvassing the many kinds of family situations and problems for which such documents are recommended. I identify several salient ideas about family self-constitution that emerge from these contexts. Part II asks how such family constitutions and mission statements mesh with visions in political theory and constitutional law of

7. Thanks to Robert Post for suggesting this term.

8. See *infra* Part I.

9. As I discuss *infra* Part I, Stephen Covey seems to exclude gay and lesbian families from his idea of family diversity.

the functions that families serve in the constitutional order. Of what import is this form of family self-constitution for family law and constitutional law? I also evaluate some tensions in the literature about family constitution making. In Part III, I conclude by identifying some avenues for further research on how apt corporate and constitutional law analogies are for defining and regulating families. I suggest that the turn to such analogies may encourage fruitful work on a broader "jurisprudence of associations"—that is, the infrastructure of families and other parts of civil society in a new constitutional order.

I. FAMILY CONSTITUTIONS

Drafting family constitutions seems to be a trend, if a recent article in the *New York Times*, "Ratifying the Family Constitution,"¹⁰ is any indication. Borrowing from the corporate world's use of "mission statements," a growing number of families are drafting family mission statements and constitutions. Why? "More and more, . . . people are yearning to define their values in a society where many of the key institutions that used to provide them—family, churches, political leaders—seem to be in flux or under siege."¹¹

There is no statistical profile of who is writing family mission statements and family constitutions, but "they seem especially popular among consumers of self-help literature, families that run businesses together, religious families and very wealthy families with large inheritances."¹² A search for references to family constitutions and family mission statements in the media and the Internet over the last decade or so bears out these specific contexts in which such documents are advocated or adopted.¹³ It also reveals another frequent context: Various parenting and time-management experts champion family constitutions and family mission statements as devices to help pressured parents find a way to address the widely-shared problem of finding balance between work and home. Often, a family mission statement features as a tool that a working mother can draw upon to bring into the home important organizational and management skills from the workplace.

Why should families draft constitutions and mission statements? In the words of Stephen R. Covey (quoted at the outset of this article), whose best-

10. Edward Lewine, *Ratifying the Family Constitution*, N.Y. Times, Jan. 26, 2006, at G1.

11. *Id.* (reporting the views of Jeffrey Abrahams, expert on corporate mission statements).

12. *Id.*

13. This article draws on research undertaken, at my request, by Cindie Leigh, research librarian at Hofstra University School of Law, and Ronald Day, research librarian at University of Pennsylvania Law School, during my time there as a visiting professor. Their searches included a sampling of references to family constitutions and family mission statements on the internet and searches for references to these same terms in various media sources and periodicals since the mid-1990s.

selling book, *The 7 Habits of Highly Effective Families*, is credited as the most influential source in this new constitution-making trend,¹⁴ a "mission statement" will serve as "the literal constitution of your family life."¹⁵ When "principles get built right into the very structure and culture of the family . . . the mission statement becomes like the Constitution of the United States—the ultimate arbiter of every law and statute."¹⁶ Akin to the U.S. Constitution, which has survived "for more than two hundred sometimes turbulent years," a family constitution can be "the foundational document that will unify and hold your family together for decades—even generations—to come."¹⁷ From the corporate world, Covey draws on the familiar idea of a mission statement.

In this section, I begin with a brief introduction to what a corporate mission statement is and raise some questions about how this device is to apply to families. I will then examine how the family constitution (FC) and family mission statement (FMS) feature in the work of Stephen Covey, an influential proponent of the FC/FMS. Next, I look at the case made, in the literature about FC/FMS, for why and how such devices can help various types of families.

I will focus on assertions about why these many types of families should borrow, from the corporate world, the tool of the mission statement and, from the political world, the U.S. Constitution, as apt models for family self-constitution. I will also emphasize some common themes that emerge in the literature about FC/FMSs.

A. *The Corporate Mission Statement and the U.S. Constitution*

As a prelude to considering the corporate mission statement's translation into the domain of family, it is useful to begin with some working understanding of what such a statement is and some of the puzzles raised by importing this concept into family governance. In *The Mission Statement Book*, which collects hundreds of corporate mission statements, Jeffrey Abrahams explains that a mission statement is part of "the *set of fundamental principles* by which a business operates"—that is, a "blueprint for success"—and that it identifies "core values" of a corporation and articulates a vision.¹⁸ "[E]very company . . . needs a mission statement," for "[s]haping the identity of a corporation really begins with defining its mission. Its reason for being. Its purpose. Focus. Goal."¹⁹ A mission statement "engenders a company with a sense of purposefulness . . . serves to unify people in a company . . . provides the company and its employees with a sense of identity," and "*provides a foundation* on which the company

14. Stephen R. Covey, *The 7 Habits of Highly Effective Families* 93 (1997).

15. Lewine, *supra* note 10.

16. Covey, *supra* note 14, at 142.

17. *Id.* at 93.

18. Jeffrey Abrahams, *The Mission Statement Book: 301 Corporate Mission Statements from America's Top Companies* 9, 11-12 (Ten Speed Press 1999) (1995).

19. *Id.* at 8.

can build its future.”²⁰ Similarly, Patricia Jones and Larry Kahaner, in *Say It & Live It: 50 Corporate Mission Statements that Hit the Mark*, give this account of the role served by corporate mission statements:

Corporate mission statements—sometimes called value statements, credos, or principles—are the operational, ethical, and financial guiding lights of companies. They are not simply mottoes or slogans; they articulate the goals, dreams, behavior, culture, and strategies of companies more than any other document.

During our research one fact stood out. It was how much companies truly relied on their mission statements to help them through trying times and in making tough decisions. The comment we heard over and over was: “We didn’t need long discussions about how we were going to handle the situation. The mission statement quickly told us how to act.”²¹

Corporate mission statements themselves, on some accounts, are analogous to the U.S. Constitution. The Preamble of the U.S. Constitution could be viewed, Abrahams notes, as “a kind of mission statement, establishing the reason for the creation of the historical document.”²² And Jones and Kahaner state that although the U.S. Constitution is fallible (for example, not outlawing slavery at the inception), it is still “an excellent, much revered, and often imitated set of values.”²³ Just as it “allows us to aim high and set worthy goals,” corporate mission statements are about “worthy goals and aspirations.”²⁴

The corporate analogy raises a number of questions, some of which I note here. Do proponents of the FMS view it as entirely aspirational, or will it be enforceable? Will there be monitoring for compliance and, if so, by whom? In contrast to the founding documents of a corporation, such as a charter (or constitution) or articles of incorporation, corporate mission statements adopted during the life of the corporation are generally not legally enforceable documents. Indeed, in contrast to the view that corporate mission statements are “vital, essential, . . . insightful, and necessary to focus discussions on core values” and to guide management, some critics contend that “mission statements are valueless, nonmemorable, *largely ignored*, reflect only common sense, or are a waste of time, resources, and energy.”²⁵ And in contrast to documents that may be

20. *Id.*

21. Patricia Jones & Larry Kahaner, *Say It & Live It: 50 Corporate Mission Statements that Hit the Mark*, at ix-x (1995).

22. Abrahams, *supra* note 18, at 7.

23. Jones & Kahaner, *supra* note 21, at x.

24. *Id.*

25. Nonprofit Governance: The Executive’s Guide 157 (Victor Futter & George W. Overton eds., 1997) (emphasis added) (quoting Philip A. Faix, Jr., on these diverse views). Faix mentions Covey’s strong advocacy of organizational mission statements, and goes on to recommend that “it would be helpful for every tax-exempt nonprofit organization to have a well-articulated mission statement,” *id.*, and points out that, because mission statements may be scrutinized by others, including the Internal Revenue Service and other governmental authorities, “the organization’s counsel and tax advisor should review all drafts of the

internally enforced, such as corporate codes of conduct, a mission statement may lack internal enforcement mechanisms. Is an FMS more analogous to the founding documents of a corporation—drafted before a corporation is formed or a venture is launched—or to strategic plans adopted once an enterprise is under way?²⁶

Another question is whether proponents of family mission statements have in mind the for-profit or the nonprofit corporation. If the latter, then stating a “mission” or “purpose” is a fundamental requirement for forming a nonprofit corporation, and, in some jurisdictions, directors’ legal duties include a duty of obedience to the mission, which requires an effort to preserve the nonprofit’s mission.²⁷ Do proponents of the FMS envision that, by analogy to monitoring of the nonprofit corporation, society has an interest in monitoring how well families adhere to their stated purposes or mission or whether they seek to “reprioritize” their mission?²⁸ In considering this, a distinction between mission and mission statement may be relevant: A nonprofit mission, stated in a charter or incorporating document, may engender legal duties and monitoring by governmental authorities, by contrast to its “mission statement,” which might be a strategy for carrying out the mission, devised and revised by a nonprofit organization’s board at annual meetings.²⁹

How perfect is the analogy between the mission statement and the U.S. Constitution? To be sure, the Constitution might be said to state aspirational principles and ends. But it also sets out governmental roles and powers, as well as limits on powers. Such restraints on government correlate with individual entitlements, or constitutional rights, and constitutional litigation is a key arena in which individuals and groups seek to redress violations of such rights. How does this framework fit family self-governance? For example, with the exception of some FMSs developed in connection with wealth transfer issues and family businesses, proponents of FMSs do not seem to propose analogous legal enforcement mechanisms. And the ongoing disagreements by jurists, scholars, and the public over how to interpret the Constitution in particular instances seem to contradict the idea that a constitution is a blueprint that tells us what to do in every situation, as some proponents of the FC seem to assume.

mission statement for legal compliance with its articles of incorporation, bylaws, and tax-exempt status.” *Id.* at 159.

26. Thanks to my colleague Ronald Colombo for raising this question.

27. See *Manhattan Eye, Ear & Throat Hosp. v. Spitzer*, 715 N.Y.S.2d 575, 593 (Sup. Ct. 1999); Dana Brakman Reiser, *Dismembering Civil Society: The Social Cost of Internally Undemocratic Nonprofits*, 82 Or. L. Rev. 829, 835-37 (2003); Evelyn Brody, *Whose Public? Parochialism and Paternalism in State Charity Law Enforcement*, 79 Ind. L.J. 937, 956-62 (2004).

28. See, e.g., *Manhattan Eye, Ear & Throat Hosp.*, 715 N.Y.S.2d at 575 (reviewing a nonprofit hospital’s effort to “reprioritize” its mission by selling a hospital).

29. Thanks to Norm Silber for raising this distinction.

B. Stephen Covey's Conception of the Family Mission Statement and Family Constitution

Stephen Covey is not the only advocate of drafting family mission statements and constitutions, but he is the most frequently cited source for this idea. In his best-selling book, *The 7 Habits of Highly Effective Families*, which followed up his prior best-selling book, *The 7 Habits of Highly Effective People*, Covey proposes that families develop an FMS in accordance with Habit 2: Begin with the End in Mind.³⁰ His company, Franklin Covey, offers an array of motivational products and services, all growing out of his "seven habits" philosophy, which he developed while writing a dissertation on American "success" literature.³¹ Covey is a Mormon, and credits the Mormon religion as a source of these habits, but also insists that the habits are "universal" and may be found in all major world religions.³² Whether the issue is how to stop shootings in schools, solve the problem of work/family conflict, promote healthy marriage, or address family dysfunction, the seven habits, Covey contends, offer a valuable tool for all families.³³

In *The 7 Habits of Highly Effective Families*, Covey depicts a change from a "family-friendly" to a "family-hostile" society in which families can no longer rely on the rest of civil society or on government to support and reinforce their values and their very purposes as a family.³⁴ He argues that, in the past, families could "successfully raise a family 'outside-in,' because

30. See Covey, *supra* note 14, at 70-111 (explaining Habit 2). The seven habits are as follows: Habit 1: Be Proactive; Habit 2: Begin with the End in Mind; Habit 3: Put First Things First; Habit 4: Think "Win-Win;" Habit 5: Seek First to Understand . . . Then to Be Understood; Habit 6: Synergize; and Habit 7: Sharpen the Saw. *Id.* at 390. Covey subsequently announced an eighth habit: "Find your voice and inspire others to find theirs." Stephen Covey, *The Eighth Habit: From Effectiveness to Greatness* (2004).

31. There are Franklin Covey stores around the world, which sell books, tapes, daily planners, and calendars, as well as workshops—products also available online. See Franklin Covey, <http://www.franklincovey.com> (last visited Oct. 31, 2006). When I purchased Covey's book, *The 7 Habits of Highly Effective Families*, it came with a bookmark listing several such products and programs. On how the "seven habits" grew out of Covey's dissertation research on success literature, see Jon Fear, *Stephen R. Covey . . . Just the Facts*, Record (Kitchener-Waterloo, Ontario), Apr. 11, 2001, at E2; Patricia Kitchen, *Just Don't Call Him a 'Guru,'* Newsday (New York), Mar. 22, 1998, at F9.

32. Elizabeth Fenner, *The Secrets of His Success*, Fortune, Nov. 29, 2004, at 156, 158.

33. For a discussion about school violence, see *infra* note 86 and accompanying text. At a Heritage Foundation event on healthy marriage promotion, for example, Covey advocated the family mission statement (FMS) as a way for families and couples to improve their relationships and to "seek solutions that are 'ours' rather than 'yours' or 'mine.'" Cheryl Wetzstein, *Bush Policies Push 'Healthy' Marriage*, Wash. Times, Jan. 20, 2002, at A2. In a keynote speech at the Utah Governor's Initiative on Families Today conference, Covey advocated creating an FMS as a way to "spell out values, purpose, and destination." Linda Thomson, *Don't Put Selves on Guilt Trips, Covey Warns*, Deseret News (Salt Lake City), Sept. 14, 1997, at B1; see also Carol Kreck, *"Habits" Formula Has Effective Application for Families, Too*, Denver Post, Nov. 1, 1998, at F4 (reporting Covey's belief in the power of the seven habits to help the most dysfunctional families). Covey, however, excludes gay and lesbian families from his seemingly inclusive references to all families. See *infra* Part II.B.

34. Covey, *supra* note 14, at 120-36.

society was an ally, a resource. People were surrounded by role models, examples, media reinforcement, and family-friendly laws and support systems that sustained marriage and helped create strong families.”³⁵ Thus, even if there were family problems, these social supports offered sustenance. By contrast, in the last thirty to fifty years, “the trends in the wider society . . . have basically shifted from pro-family to anti-family.”³⁶ His list includes the familiar litany about the rise in divorce, nonmarital births and single-parent families; he also includes the threat posed to women from domestic violence, high rates of teen suicide and teen STDs, and dropping SAT scores.³⁷ Such trends he links to changing infrastructure, such as changes in popular culture (increased exposure to television and a coarsening of entertainment), in laws (such as no-fault divorce), in the economy (including the rise in families with two working parents and government, since the Great Depression, taking over—from families—the responsibility for caring for the aged and destitute) and in technology (including access to pornography and violence).³⁸ Covey warns, “If we do not teach our children, society will. And they—and we—will live with the results.”³⁹

But the problem also stems from within. Covey echoes political and legal rhetoric about the formative role of families, as well as familiar concerns about the decline of families and other parts of civil society, and the “infrastructure” of society. The family, he argues, is “the most important, fundamental organization in the world, the literal building block of society. . . . No other institution can fulfill its essential purpose,” and yet, “in most families members do not have a deep sense of shared vision around its essential meaning and purpose.”⁴⁰ In particular, most families lack a family mission statement. Through two contrasting charts showing “What was the Culture in the Home 40 to 50 Years Ago?” and “What is the Culture in [the] Home Today?,” Covey asks “Who is Raising Your Children?”⁴¹ The charts highlight dramatic changes indicating the declining influence of the family on children: the decline in family rituals, like the family dinner and family gathering; longer work weeks for parents and more use of day care; the overweening presence of entertainment technologies in the home, coupled with minimal time by parents with their children; and less involvement with extended family.⁴² Added to all this is a perception that religion is losing, rather than increasing, its influence in American life and that America is slipping deeper into moral decline.⁴³

35. *Id.* at 15-16.

36. *Id.* at 16.

37. *See id.* at 17.

38. *Id.* at 120-26.

39. *Id.* at 146.

40. *Id.* at 76.

41. *Id.* at 134-35.

42. *See id.*

43. *See id.*

The conviction that strong families undergird a strong nation goes hand in hand with Covey's contention that "'most of society's problems [are a] result of families in turmoil.'"⁴⁴ The roots of America's problems may be traced to the state of its families ("'without better families, we're just going to have to build more prisons'").⁴⁵ A corollary to the idea that family failure accounts for most social problems is Covey's vision of a redemptive or messianic role for functional, or effective, families. He has stated that "[i]f every functional family adopted one dysfunctional family, '[we] would . . . strike the death blow of 90 percent of all the social problems in society.'"⁴⁶ Once a family becomes successful, the next stage is for it to become "significant": to have meaningful involvement with the outside world and a sense of responsibility and stewardship.⁴⁷

Covey's call to arms is that because families "can no longer depend on society or most of its institutions,"⁴⁸ they must be "proactive" (the first Habit)⁴⁹ and "create" and "reinvent."⁵⁰ Parents must provide leadership in their families and restructure their families in the face of an unsupportive societal infrastructure.⁵¹ Enter the family constitution, which stems from Habit 2's directive to "[b]egin with the end in mind."⁵² When families are able, after a process of reflection and participation, to "creat[e] and liv[e] by a mission statement,"⁵³ to "create a clear, compelling vision"⁵⁴ of what their family is all about, "principles get built right into the very structure and culture of the family."⁵⁵ "Putting principles first" may foster a sense of "stewardship, a sense that we are both responsible and accountable for the way in which we handle all things, including family."⁵⁶ "[T]he mission statement becomes like the Constitution of the United States—the ultimate arbiter of every law and statute."⁵⁷ And this family constitution guides the everyday life of the family. Like the U.S. Constitution, a family constitution may be amended from time to time. He urges families to review their FMS/FC on regular occasions and revise them as appropriate.

Covey repeatedly uses the metaphor of a compass: Just as a compass points to a "'true north'—a constant reality outside ourselves that never

44. Dana Oland, *'Habits' Author Will Speak in Boise*, Idaho Statesman, Oct. 26, 1999, at E1.

45. Cindy Ramos, *Putting Family First a Must, Author Says*, San Antonio Express News, Nov. 3, 1998, at E1 (quoting Covey).

46. Gene Stowe, *Covey's Goal: Building Stronger Families*, S. Bend Trib. (Ind.), Aug. 18, 2005, at B1 (quoting Covey).

47. See Covey, *supra* note 14, at 317.

48. See *id.* at 135.

49. *Id.* at 27-69.

50. *Id.* at 322-25.

51. *Id.* at 136-37.

52. *Id.* at 70-71.

53. *Id.* at 142.

54. *Id.* at 71.

55. *Id.* at 142.

56. *Id.* at 74-75.

57. *Id.* at 142.

changes—so there are natural laws or principles that . . . govern all behavior and consequences.”⁵⁸ In many public appearances, Covey draws attention to the watch he wears, which has a compass underneath. He makes the point that, just as the compass “points direction,” if people develop personal and family mission statements, and organize everything in their lives around them, they would be able to distinguish between the important and the unimportant as they cope with demands on their time.⁵⁹ The seven habits, such as developing the FMS, help to align families with natural laws or principles, since they, Covey claims, are based on natural laws and principles.⁶⁰

Another metaphor for family life that Covey employs is the flight plan that keeps an airplane on track.⁶¹ The first chapter of *The 7 Habits* opens with Covey’s assertion, “Good families—even great families—are off track 90 percent of the time!”⁶² But, he continues, “[t]he key is that they have a sense of destination. They know what the ‘track’ looks like. And they keep coming back to it time and time again.”⁶³

Family time and family rituals give structure and intentionality to family life and help to turn the family mission statement into the family constitution by writing it into the “hearts and minds” of family members.⁶⁴ As such, the FC can “meet four everyday needs: spiritual (to plan), mental (to teach), physical (to solve problems), and social (to have fun).”⁶⁵ Covey reports that his own experience writing a mission statement has helped him realize that “family” itself is a principle—“universal, timeless, and self-evident” (perhaps here alluding to the Declaration of Independence?).⁶⁶ Family, he contends, is “a principle built deeply into every person.”⁶⁷

An FMS follows from the importance of the idea of two creations, or the idea that “all things are created twice” (Covey uses as examples a blueprint preceding a building and a flight plan preceding a flight).⁶⁸ Creating an FMS is the first creation, and then the FMS becomes the family constitution as family members imprint it through actions that help it to become their guide to daily life.⁶⁹

What is the status of the FMS/FC? As Covey describes them, they are not meant to be documents with legal consequences. Unlike a constitution,

58. *Id.* at 128.

59. *Hardball with Chris Matthews: Stephen Covey Discusses His New Book, “Living the 7 Habits”* (CNBC television broadcast June 16, 1999) (transcript on file with the Fordham Law Review).

60. Covey, *supra* note 14, at 128.

61. *Id.* at 9-10.

62. *Id.* at 9. Covey makes no effort to support this astoundingly high number; a common rhetorical flourish in his speeches is that families are “off track” most of the time.

63. *See id.*

64. *Id.* at 91; *see also id.* at 140-41.

65. *Id.* at 141.

66. *Id.* at 15.

67. *Id.* at 136.

68. *Id.* at 72.

69. *Id.* at 73.

they do not set out limits on (family) government that could be enforced through claims of individual rights. Nor do they aim to set out legally enforceable promises or obligations. Here, they contrast with, for example, premarital agreements entered into by persons who are marrying or mid-marriage agreements made during the course of a marriage. They also contrast in this respect with private contracts entered into by adults in intimate relationships to govern the terms of their relationship. But they are meant to be "living constitutions" in the sense that they are written into people's hearts and minds so that they become the daily constitution of everyday family life. An analogy that comes to mind is the Biblical injunction to Israel to keep the words of God's commandments symbolically inscribed "upon" their heart (teaching them to their children and constantly talking of them), as well as literally written on their doorposts and gates.⁷⁰

There is an intriguing parallel to the U.S. Constitution: the attempt to constitute a "we"—or "We the People"—out of many individuals. Through the process of creating a family mission statement, Covey argues, family members move from "self-awareness" to "family awareness," from "imagination" to "creative synergy," and from an "independent will" to an "interdependent will or social will"—a "sense of 'we.'"⁷¹ Creating a "social will" is more "than just a collection of individual wills."⁷²

A recurring theme in scholarship about constitutional jurisprudence of the family—as well as in family law—is the transition from the notion of the family as a unit, or entity, to the family as comprised of individuals, each with his or her own rights and interests. Disaggregating the family into individuals, communitarian scholars contend, weakens a sense of family belonging, solidarity, and commitment to a shared enterprise.⁷³ As family law moves away from status toward contract, the argument goes, atomism and self-interested individualism may gain over these more communal values. This effort to create a sense of "we" through an FMS/FC is an intriguing counterpoint. Families, Covey urges, should reflect on questions like, "[w]hat is the purpose of our family?," "[w]hat are our

70. I am referring to the "Shema," in which God commands Israel: "Hear, O Israel, the LORD our God, the LORD is One. And thou shalt love the Lord thy God with all thine heart, and all thy soul, and with all thy might. And these words, which I shall command thee this day, shall be upon thine heart; and thou shalt teach them diligently unto thy children, and shalt talk of them when thou sittest in thy house, when thou liest down, and when thou risest up. And thou shalt bind them for a sign upon thine hand, and they shall be for frontlet between thine eyes. And thou shalt write them upon the door-posts of thy house, and upon thy gates." *Deuteronomy* 6:6-9.

71. Covey, *supra* note 14, at 78 (emphasis omitted).

72. *Id.* at 79. Covey also invokes the image of DNA. *Id.* at 97-98. A mission statement that reflects a "sense of shared vision and values" helps keep a family focused and together—even in a time of challenge—and "literally becomes the DNA of family life." *Id.* The "structure inside each cell of the body[] represents the blueprint for the operation of the entire body." *Id.*

73. See Bruce C. Hafen, *Individualism and Autonomy in Family Law: The Waning of Belonging*, 1991 BYU L. Rev. 1.

responsibilities as family members?," and "[w]hat are the principles and guidelines we want our family to follow?"⁷⁴

The FMS/FC has not only a unifying, but also a protective function. A successful family, in Covey's view, is one that develops an "immune system," which allows it to "handle anything."⁷⁵ The FMS/FC provides a kind of protective shield. But Covey also envisions families as active in the world, ministering (as it were) to other families. Families should also reflect upon their place in and obligations toward society. This is evident in questions Covey urges that families address. For example, "How can we contribute to society as a family and become more service-oriented?"⁷⁶ This look outward is also evident in statements in the family constitutions he shares. (One FMS declares: "We nurture all life forms and protect the environment. We are a family that serves each other and the community [and] . . . [w]e hope to leave a legacy of the strength and importance of families.")⁷⁷ As noted above, Covey also envisions the "significant family"—that is, beyond the "successful famil[y]"—in which the family "is involved in something meaningful outside itself," and "has a sense of stewardship or responsibility to the greater family of mankind, as well as a sense of accountability around that stewardship."⁷⁸

C. What Kinds of Families Draft—Or Should Draft—Family Mission Statements and Family Constitutions?

I now will examine several contexts in which families are drafting—or are urged to draft—FMS/FC. These various contexts include the following: (1) families concerned with family self-definition and with effective social reproduction (that is, good parenting and the moral education of children); (2) families struggling with time pressures and work/family conflict that seem to impair family life; (3) "nontraditional" families, such as blended families; (4) religious families seeking to align their families with a divine or biblical model for family governance; (5) wealthy families facing issues of wealth transfer to the next generation; and (6) family businesses seeking successful transfer of the business to the next generation. (For the latter two categories of families, the FMS is also used and advocated with respect to philanthropic endeavors.)

The case for FMS/FC in these various contexts sounds several common themes. First, the family is the most fundamental, basic organization of

74. Covey, *supra* note 14, at 89.

75. Thomson, *supra* note 33 (quoting a keynote speech by Covey at Governor's Initiative on Families Today conference); see also *Public Eye with Bryant Gumbel: Stephen Covey, Author of "The 7 Habits of Highly Effective Families"* (CBS television broadcast Oct. 8, 1997) [hereinafter *Public Eye with Bryant Gumbel*] (transcript on file with the Fordham Law Review). During the interview with Covey, he stated that an effective family is "a family that has an immune system that can solve problems as they come along." *Id.*

76. Covey, *supra* note 14, at 89.

77. *Id.* at 92.

78. *Id.* at 317.

society, and so, like other organizations, it needs a mission statement. Second, adopting an FMS or FC is necessary to counter various internal or external threats to family unity, stability, and continuity. Third, successful families do not just happen: An FMS or FC allows self-definition or self-authorship by a family and its members concerning what a family is “about” and what its purpose and values are. Fourth, FMSs and FCs are useful tools for social reproduction—properly educating and passing on values from parent to child, or from generation to generation. Fifth, FMSs and FCs result from participation, or the involvement by all family members in deciding a family’s mission or ends. A final theme is that an earlier generation of parents could rely on well-established family rituals, such as the family meal, to foster family unity and stability, but today, self-consciously created family rituals, such as family meetings, are necessary to help internalize the FMS/FC.

In offering this inventory, I will also suggest some tensions in the literature about the process of family self-constitution, which relate to the natural versus constructivist model of family and the question of family democracy that I take up in Part II. On some accounts, the process of developing an FMS/FC is an open-ended one, a voyage of discovery in which each family will identify its own unique ends and values, while on others, it entails aligning a family with universal principles. Similarly, the model of a broadly participatory process of formulating an FMS/FC is in tension with that of a “head” or leader of the family getting other family members to “buy into” his or her vision of family values and of the values associated with family money or a family business.

1. FMS/FC as an Aid to Good Parenting and to Family Self-Definition

One rationale for families borrowing the idea of a mission statement from the corporate world is that it can contribute to good parenting and to a family’s self-definition. Drafting an FMS, thus, is a way that parents can be “pro-active” with teaching children values,⁷⁹ and is a component of “emotionally intelligent parenting.”⁸⁰ Among the “ten best things you can do for your child,” *Parenting* magazine included, “Really think about your values, what’s important to you—and then put it in writing” in an FMS.⁸¹ An *Investor’s Business Daily* story offered this teaser: If a “carefully drafted mission statement” is a “powerful mechanism for stimulating action or progress at a company,” and “keeping it from drifting from its core values,” just “[i]magine what it might do for your family.”⁸²

79. See Elizabeth Simpson, *Talk Is Fine, But Children Will Do As You Do*, *Virginian-Pilot*, June 29, 1997, at A7.

80. See Lee Stratton, *New Parenting Books Focus on Pride, Feelings, Limits*, *Columbus Dispatch*, Feb. 19, 1999, at F1.

81. Charlotte Latvala, *The 10 Best Things You Can Do For Your Child*, *Parenting*, Apr. 2004, at 110, 114 (quoting estate planning expert Jon Gallo).

82. Robin Grugal, *Make a Family Statement*, *Investor’s Business Daily*, Nov. 26, 2002, at A3.

This notion of protecting against drift brings to mind Covey's imagery of being on and off track. It also stresses the need for families to reflect consciously on their self-definition (that is, self-authorship) and on ends and values. One news story reported a "growing consensus among spiritual leaders that . . . deeper self-examination" by families about such questions as, "where are we going as a family?," "[w]hat do we want to do?," and "[w]hat do we stand for?," is "exactly what families—and individuals—need to balance their lives, make wise decisions and feel purpose."⁸³ The process of drafting an FMS/FC can help family members articulate and live out the family life they envision for themselves.⁸⁴

For example, one family, in an article appearing in *Family Practice Management*, describes its FMS as "a shared vision of what we value and who we want to be as a family," which has "helped us identify our most important priorities," and helped to "map our direction as a family and stay that course."⁸⁵ The premise for drafting such an FMS is that in a world filled with endless choices and distractions, families need to slow down and gain insight about where they want to go in order to have the family life they envision. Thus, an FMS should be reviewed at least yearly, and revised as priorities are reassessed.

Another premise is that an FMS can help families be strong and resilient in the face of difficult family problems, rather than dysfunctional. In the aftermath of the Columbine High School shooting, Stephen Covey was a guest on *Larry King Live* show on what to do about the problem of teen violence.⁸⁶ Covey identified that people "haven't prioritized the family as being the number one concern of their life [sic]" as the fundamental problem, and advised that doing so was necessary to build a strong family against a "family-unfriendly environment."⁸⁷ He further advised that parents could develop closer relationships with their children and strong family unity if they developed an FMS and held regular family meetings.⁸⁸

A CNN show about dysfunctional and functional families used as its point of departure for "some of the kinds of things that seem to go awry in families," the case of school teacher Mary Kay Letourneau, a married woman with children of her own, who was convicted of having sex with a

83. Miriam Pace Longino, *First Things First: Family Mission Statements Can Help Mom, Dad, and the Kids Bring Order and Purpose to Hectic Lives*, Atlanta J.-Const., Dec. 28, 2002, at B1.

84. See Jeff Parkkila, *Work to Bond with Kids*, Sun-Sentinel (Ft. Lauderdale, Fla.), Aug. 17, 2001, at 3.

85. Marc, Karen, Jessica, & Julie Rivo, *Family Mission Statements*, Fam. Prac. Mgmt., Apr. 1999, at 60, available at <http://www.aafp.org/fpm/990400fm/balancing.html>.

86. CNN *Larry King Live: While Authorities Investigate Columbine High School Shooting, Community of Littleton Grieves for Its Dead* (CNN television broadcast Apr. 27, 1999) (transcript on file with the Fordham Law Review).

87. *Id.*

88. *Id.*

thirteen-year-old boy (she had a baby as a result).⁸⁹ Asked about the sorts of measures families can take to avoid problems, John Bradshaw (identified as a family expert) recommended family councils and family mission statements, which allow children to participate in family governance in age-appropriate ways.⁹⁰ Contending that society was in “an age of deep democracy,” an age “reacting to Nazism and patriarchy,” he urged that participatory measures such as the FMS help a family embed democracy.⁹¹

This idea of family democracy is also evident in descriptions of the family meeting. For example, in contrast to the old adage that children should be seen and not heard, a newer model, one news story reports, is, “Children are expected to be seen *and* heard at regular family get-togethers, where bonds are forged and values shared.”⁹² At such family meetings, family members spend time together and discuss what they value as a family. Such meetings may inspire open dialogue. A story in the *Christian Science Monitor*, reporting on the trend of the new ritual of the family meeting, notes an observation that “[i]n the old days . . . these meetings were called dinner.”⁹³ Today, because of parents’ work and children’s activities, it is necessary to schedule family time.⁹⁴ This story also notes that the Mormon Church has a tradition of the family council and family meeting.⁹⁵

2. FMS/FC as a Solution for the Time-Pressured Parent (or: Mom as CEO)

Some self-help literature aimed at families touts the theme that business strategies that help successful companies run smoothly can also help homes run more efficiently and effectively. In particular, family meetings and an FMS/FC can help families find a balance between work and home. The target audience for this self-help is the “[p]ressured [p]arent,” and especially, the working mother, who rushes around with time demands that may take away from family time.⁹⁶ Moral education is one animating concern: Such parents seek to impart moral and ethical lessons to their children, particularly in the “overwhelming presence of mass media, which seems to have nearly no sense of morality or propriety.”⁹⁷ But when the culture does not emphasize values, how do such parents find time to do so? How do they manage family life in the face of time pressures?

89. *CNN Talkback Live: Dysfunctional and Functional Families* (CNN television broadcast Nov. 14, 1997) (transcript on file with the Fordham Law Review).

90. *See id.*

91. *Id.*

92. Jennifer Wolcott, *Nights at the Round Table*, *Christian Sci. Monitor*, Dec. 27, 2000, at 13.

93. *Id.* (quoting Dr. Paul Coleman, author of *How to Say It to Your Kids: The Right Words to Solve Problems, Soothe Feelings, & Teach Values* (2000)).

94. *See id.* at 14.

95. *See id.*

96. Mary Amoroso, *The Pressured Parent: Learning the Lessons of Morality*, *Record* (Bergen County, N.J.), Sept. 20, 1998, at L3.

97. *Id.*

One answer is the FMS. Just as a corporate mission statement is intended to be “the philosophical axle on which the wheel of the business turns,” so too an FMS can be a “living guide to help focus on what’s important,” if a family takes time to “honestly assess its values and purpose and allows everyone to share freely in the process.”⁹⁸ The FMS “can help mom, dad, and the kids bring order and purpose to hectic lives.”⁹⁹ Through an FMS, a family “talks about the kind of family parents and children want to have, the kinds of behaviors and values they will and won’t live by, how we trust one another, and how we make decisions.”¹⁰⁰

Generating the FMS/FC is a necessary, but not sufficient step. Regular family rituals must reinforce the family mission. Advocates of the FMS recommend that families adopt one repeated action or behavior to practice consistently and demonstrate commitment to the mission.¹⁰¹ Moreover, families today, it is argued, must make a more conscious effort to establish such rituals than earlier generations. In one *USA Today* story, which reported that families—taking a cue from CEOs—can get “unwieldy modern lives back on track” with an FMS, a parent observes, “It was not a sacrifice for our parents to be home for dinner, but we have to make a point of it.”¹⁰² The ritual of an earlier generation’s family meal, or fireside chat, must be recreated through a self-conscious commitment to a weekly family meeting.

Indeed, some parents who experienced their own personal epiphanies about the importance of an FMS and family rituals have developed “how to” products to help other parents take these steps. For example, the “Family Table Time Kit” comes with a table cloth on which family members may write their FMS.¹⁰³ With the FMS in its center, such a tablecloth, its creators promise, becomes the “tapestry” of family life, the “anchor” of the family.¹⁰⁴ Recommending this product, a priest observes that the Family Table Time Kit

pulls families together on a routine basis to talk about the stories in their own daily living. So often, families miss each other’s stories because we’re all so busy and so engaged, children as well as parents. Family Table Time invites that simple kind of fireplace chat that went on for so many families years ago.¹⁰⁵

98. Longino, *supra* note 83.

99. *Id.*

100. Amoroso, *supra* note 96.

101. Grugal, *supra* note 82.

102. Marco R. della Cava, *Taking Stock of Family Business*, *USA Today*, Apr. 29, 2004, at D1.

103. Jane Clifford, *Family Time Around the Dinner Table Is Precious*, *San Diego Union-Trib.*, Feb. 1, 2003, at E2; Lynn Petrak, *Getting it in Writing: Families Gather, Bond Around Tablecloths*, *Chi. Trib.*, July 9, 2000, at L9.

104. *Market Call: Maverick of the Morning: Family Communications CEO—How-To for Family Table Time* (CNNfn broadcast Nov. 27, 2002) (transcript on file with the Fordham Law Review) (interview with Neal Kimball, creator of the Family Table Time Kit).

105. Petrak, *supra* note 103.

Such a comment is reminiscent of communitarian writings about the importance of "table talk" in strengthening family bonds and carrying on tradition.¹⁰⁶

If the FMS may be helpful for pressured parents, then it is claimed to have special value as a family management tool for mothers. For example, a news program on NBC reported this dilemma: Although seventy percent of women with children work outside the home, "many women who successfully manage people, time, and money at the office find it difficult to apply those same skills to running their home."¹⁰⁷ On this program, Neale Godfrey, author of *Mom Inc.: Taking Your Work Skills Home*, opined, "You have to . . . run your home the same way that you run it at work."¹⁰⁸ In other words, there needs to be a boss (mom), who articulates things clearly to the rest of the team.¹⁰⁹ Why should the wife/mother be the boss, or CEO, at home? Because there has to be one person in that position, and women know they would do it better than men.¹¹⁰ A story on *ABC News* reported that a business-like approach at home was a solution to the social realities of more women going to work and of parents, due to time pressures at work, spending less time with their children.¹¹¹ The program interviewed a family that has adopted corporate management techniques, such as drafting an FMS, to generate a "clear, succinct definition of what's important" and to make sure they had more time for the children.¹¹²

The family is an organization, the argument goes, and like other institutions, needs organization and management. In a story about starting the new year right, the *Washington Times* reported one expert's view that "[a]n organized person is someone who knows what they want to accomplish and feels they have their resources aligned to do that."¹¹³ Better organization will allow parents to give more attention to their children. And a mission statement is a tool to achieve such goals, because it helps families to "tune in to the big picture," find out what's most important to them as a family, and set priorities.¹¹⁴ Various experts on family management and home organization concur (some drawing on Covey). For example, Kathy Peel, author of such books as *The Family Manager's Everyday Survival Guide*, analogizes the job of family manager

106. Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* 174 (1991).

107. *Saturday Today: "Mom, Inc." Author Neale Godfrey Talks About Taking a Woman's Work Skills Home* (NBC television broadcast Oct. 23, 1999) (transcript on file with the Fordham Law Review).

108. *Id.*

109. *Id.*

110. *Id.*

111. *ABC World News Tonight: Managing Family Time* (ABC television broadcast Sept. 18, 1996) (transcript on file with the Fordham Law Review).

112. *Id.*

113. Alexandra Rockey Fleming, *Cluttercontrol: Organizing Household, Business into Manageable, Efficient Routine*, *Wash. Times*, Jan. 2, 2001, at E1 (quoting columnist Stephanie Denton).

114. *Id.*

to that of corporate CEO.¹¹⁵ She explains that “[t]he very strategies that make a business work are the same that make a family work, and the family is the most important organization in the world.”¹¹⁶ Business strategies can help families get chores done faster and have more time for what matters most. An FMS, she urges, will help parents to set priorities, make decisions about the values they want children to embrace, and afford a basis for making decisions concerning how to spend time. It can also help mothers, who need to engage in “team building within the family” and to empower and unite their “team.”¹¹⁷

The dilemma faced by the harried working mother makes for lively media “makeovers,” when such mothers meet up with organization and time management experts. With a lead-in that there are just not enough hours in the day, CBS (on a leap year day) paired a “very busy mom” with a “professional organizer,” time management expert Julie Morgenstern.¹¹⁸ The mother reported that “being at home is a lot more stressful, because I feel so much less in control at home than I do at work.”¹¹⁹ (Her ideal woman was her own mother, a housewife who had kept a beautiful home.)¹²⁰ After observing a day in the mother’s life, the expert advised her, while at work, to focus on her company’s mission statement and to draft her own personal mission statement; and while at home, to adopt an FMS in order to evaluate, “[w]hat are we about here? What is really important to this family?”¹²¹ (In a feature in *Essence* magazine on getting organized, Morgenstern similarly advised readers to “[c]reate personal, professional and family mission statements.”)¹²² Covey himself was the guest expert in a *Newsday* feature on parents seeking to balance work and family, and advised one couple to work on an FMS to serve as a “compass to . . . come back to” when they drift off course.¹²³

Time management experts often recommend personal and family mission statements, but there is some tension over whether management is an apt concept to apply to families. To be sure, the idea of household management

115. Libby Burke, *Running a Family Business*, Courier Mail (Queensland, Australia), May 16, 2002, at 18.

116. Fleming, *supra* note 113, at E3.

117. *CNN Morning News: Author Kathy Peel Offers Some Family Management Tips* (CNN television broadcast Aug. 11, 1997) (transcript on file with the Fordham Law Review).

118. *CBS This Morning: Wife, Mother and Career Woman Marianne Wascak and Time Organizer Julie Morgenstern Discuss Organizational Tips to Get More Done at Home and at Work and Allow More Family Time* (CBS television broadcast Feb. 29, 1996) [hereinafter *CBS This Morning*] (transcript on file with the Fordham Law Review).

119. *Id.* This sentiment sounds like what Arlie Russell Hochschild found in her book, *The Time Bind: When Work Becomes Home and Home Becomes Work* (1997).

120. *CBS This Morning*, *supra* note 118.

121. *Id.*

122. Valerie Vaz, *Precious Time*, *Essence*, Jan. 1996, at 57.

123. Patricia Kitchen, *A Juggle of Life's Struggles: Parents Look for Ways to Balance Work and Family*, *Newsday* (N.Y.), Mar. 22, 1998, at F8.

as an art or science is not new.¹²⁴ But the notion of managing family life by bringing skills learned on the job into the home may well reflect the way in which, as one *U.S. News & World Report* cover story put it, “[t]oday, work dominates Americans’ lives as never before.”¹²⁵ Some management experts contend that parents fulfill “personnel” roles such as “training and development,” and “determining rewards and recognition.”¹²⁶ Women “typically carry out the human-resources management function,”¹²⁷ while men act as “non-executive chairmen in the home.”¹²⁸ But some scholars contend that although management skills are necessary to run a household properly, “[u]sing management jargon to describe family processes that are familiar and known to virtually everyone”¹²⁹ may be “confusing and unnecessary.”¹³⁰ Covey himself, for example, emphasizes effectiveness rather than efficiency, and leadership rather than management. As he has put it, “[y]ou lead people. You manage things.”¹³¹ Families mainly need leadership, he contends: As with businesses, “a well-led family does not require much management.”¹³² But as parents go out to work and family life becomes more complex, “the natural tendency of people is to provide more management.”¹³³

3. FMS/FC as a Tool for Creating Strong, Nontraditional Families

The plasticity of the concept of the FMS/FC is seen in the range of family contexts in which it is proposed. Covey himself champions the FMS as useful for all families, not just the “traditional” marital family, since the seven habits themselves are “universal.”¹³⁴ His book offers specific examples of FMSs drafted by families formed by a divorced parent and her children and by blended families (or step-families).¹³⁵ However, his

124. For example, Aristotle spoke of “household management” as a form of ruling: “rule over wife and children, and over the household generally,” by the husband. *The Politics of Aristotle*, bk. I, ch. XII (Ernest Baker ed., & trans., Oxford Univ. Press 1958); see also *Household Management*, *Economist*, Jan. 17, 1998, at 62 (contrasting Mrs. Isabella Beeton’s “pioneering” and best-selling book, *Book of Household Management* (1861), with Covey’s approach to family organization).

125. Andrew Curry, *Why We Work*, *U.S. News & World Report*, Feb. 24, 2003, at 49.

126. *Household Management*, *supra* note 124.

127. *Id.* (quoting Randall Schuler, New York University).

128. *Id.* (quoting Cary Cooper, University of Manchester Institute of Science and Technology).

129. Burke, *supra* note 115 (quoting Matt Sanders, Professor of Clinical Psychology at University of Queensland).

130. *Id.*

131. Micki Moore, *First Things First: Leadership Guru Stephen Covey Lives His 7 Habits Message*, *Toronto Sun*, June 23, 1996, at 58.

132. *Household Management*, *supra* note 124.

133. *Id.* (quoting Covey).

134. See *Public Eye with Bryan Gumbel*, *supra* note 75 (“Q. Gumbel: Do your principles work for all families? A. Mr. Covey: That’s the power of them, that they are principles. They’re not practices.”); see also Kreck, *supra* note 33 (reporting Covey’s remark that his book is packed with “all kinds of stories for all kinds of alternative families.”).

135. Covey, *supra* note 14, at 93-94.

inclusiveness does not extend to families formed by gay men and lesbians. At a fundraiser to ban same-sex marriage, he spoke out against same-sex marriage as violating a natural principle that children should have a mother and a father, a public appearance for which his office, after criticism, later apologized.¹³⁶ But some “how-to” literature aimed at same-sex couples does advocate the use of an FMS.¹³⁷

Two examples of how FMS/FCs are adopted by—or advocated by—nontraditional families are blended families and families with a stay-at-home father. Blended families form a sizeable percentage of all U.S. families. The United States, in recent decades, has had one of the highest divorce rates in the world (with forty to fifty percent of first marriages ending in divorce), and “high divorce rates create, among other things, a large pool of eligibles for remarriage.”¹³⁸ Over forty percent of marriages in the United States “involve a second or higher-order marriage for the bride, or groom, or both”; indeed, redivorce is “somewhat more likely than first divorce.”¹³⁹

Given this demographic picture, proponents of the FMS/FC contend that blended families, facing the challenge of forging new family bonds, offer an especially apt case for applying business analogies. One news item developed this analogy: “Forming a step-family is like merging two corporations. Suddenly there are more people in power at the top and resentful underlings who did not choose the situation.”¹⁴⁰ This merger can lead to struggles over clashing values and parenting styles and conflicting

136. Fear, *supra* note 31 (reporting the following comments attributed to Covey at an anti-gay marriage fundraiser: “I believe it takes a mother and a father to produce a child, and there’s never been an exception. To me, that is kind of a natural principle for a natural law. And that’s why I’m behind this kind of movement.”). After Covey’s appearance at a fundraiser by an organization seeking to pass a constitutional amendment against same-sex marriage in Hawaii, the Human Rights Campaign called for Covey to retract his endorsement from the organization and to apologize for his remarks. Covey’s office reportedly wrote letters of apology, calling his public appearance an “unfortunate departure” from his usual apolitical stance. See 7 *Habits Author Needs to Apologize to Community*, GLAADlines (Gay & Lesbian Alliance Against Defamation), Dec. 15, 1997, available at <http://www.qrd.org/qrd/orgs/GLAAD/general.information/glaadlines/1997/12.15.97>; Kitchen, *supra* note 31 (reporting Covey’s apology).

137. See Book Review, *Time Out*, Apr. 10, 2002, at 105 (mentioning that the book, *The Essential Guide to Lesbian Conception, Pregnancy and Birth* (2002), by Kim Toevs & Stephanie Brill Alyson, includes a sample “Family Mission Statement”).

138. Arthur J. Norton & Louisa F. Miller, U.S. Dep’t of Commerce, Econ. and Statistics Admin., Bureau of the Census, P23-180, *Marriage, Divorce, and Remarriage in the 1990’s*, at 5 (Oct. 1992), available at <http://www.census.gov/population/socdemo/marr-div/p23-180/p23-180.pdf>.

139. *Id.* at 5-6; see also Ctrs. for Disease Control & Prevention, *Cohabitation, Marriage, Divorce, and Remarriage in the United States* 22-27 (July 2002), available at http://www.cdc.gov/nchs/data/series/sr_23/sr23_022.pdf.

140. Anne Veigle, *Branching Out: Handling the Strains of Blending Two Families into One After a Remarriage*, *Wash. Times*, Apr. 18, 2000, at E1.

loyalties.¹⁴¹ Various step-family organizations recommend the FMS as a tool to help build a new family structure.¹⁴²

One informational website for step-families offers an article on the family mission statement by Peter Gerlach, author of several books on step-families. Gerlach advocates personal mission statements as well as an FMS. Drawing on Covey, he analogizes to the U.S. Constitution and describes a mission statement as “the foundation of all common policies, laws, organizational roles, and decisions . . . a blueprint that guides a person’s or a group’s activities towards consistency, order, and desired outcomes.”¹⁴³ Instead of Covey’s image of the flight plan, Gerlach conjures the image of charting a course down a river, where there are “complex current flows and hidden rocks.”¹⁴⁴ Most stepfamilies “now capsize somewhere during their multi-year trip,” perhaps because the territory is unknown and former marriage and parenting experiences are not a reliable guide. The challenge faced by “[y]ou two and your co-parenting ex mate/s”—the pilots—is to work together to “run your unique step family river,” thus safely carrying “your kids the dependent passengers.”¹⁴⁵

This river imagery of pilot and passenger assigns a strong leadership role to adults. It is not clear whether and how children of a blended family have input in formulating an FMS. Does the FMS also reflect the input of the ex-spouse/co-parents?

Some of this literature on family self-authorship strongly endorses a constructivist, or intentional, view of family. An advocate of both personal and family mission statements, Gerlach asks, “What do you suppose would happen to the U.S. divorce epidemic if most couples made and used a meaningful *relationship* mission statement—[e]specially if it were based on two Self-led partners each living from thoughtful personal Life-charters?”¹⁴⁶ He contends that drafting a good FMS grows out of family leaders placing value on intentionally fashioning a good life for themselves and their children, including thinking and talking about what constitutes such a “good life,” and having a sense of responsibility to make this vision of a good life happen.¹⁴⁷ As with the river analogy, this model emphasizes leadership, or adults generating the FMS, rather than an FMS arising out of democratic process.

By contrast to blended families, families with a stay-at-home or work-at-home dad are a very small minority of families. But this is a family model

141. See Lisa Cohn, *Step by Stepparenting Teens*, Christian Sci. Monitor, Apr. 14, 2004, at 11; Dean Geroulis, *Blended Families Can Take Steps Now to Avoid Wrangling Later*, Chi. Trib., Oct. 12, 2004, at C1.

142. Veigle, *supra* note 140 (discussing the views of Barry Miller, research director for Stepfamily Foundation).

143. Peter K. Gerlach, *What Is a “Family Mission Statement,” and Why Make One?*, Stepfamily inFormation, <http://sfhelp.org/06/mission1.htm>.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

that “more and more couples are finding . . . to be viable.”¹⁴⁸ In recent years, stories about stay-at-home dads (as well as single dads) have become a common feature of Father’s Day news coverage.¹⁴⁹ Precisely because this family model departs from the “traditional” or conventional model of male breadwinner/female caregiver or the more typical model of father and mother as dual earners, its advocates argue that an FMS can help to make this family form a success. Libby Gill, whose own family experience and interviews with other families led her to write *Stay-at-Home Dads: The Essential Guide to Creating the New Family*, recommends drafting a “family business plan,” which includes an FMS “set[ting] down goals and objectives” for each individual, for the couple, and for the family.¹⁵⁰ On a Montel Williams show on the topic of *A Different Kind of Dad*, Gill explained that this family business plan helps couples address, “What’s your mission? . . . In an ideal world, what kind of family do you want to have? . . . What’s your philosophy?”¹⁵¹

Here, the constructivist, rather than the natural, model of family is especially evident: Couples must plan a system, negotiate their roles (or job descriptions), and communicate, Gill argues.¹⁵² One obstacle such families face is the lack of respect that stay-at-home fathers experience “from other men or [from] family members because they are not earning;” another is the “Mr. Mom” stereotype that male caregivers are bumbling and taking over a role properly assigned to women.¹⁵³ Another ingredient factoring into the success of such nontraditional families is finding support outside the family for this family model, such as fathering groups and online resource guides for stay-at-home dads.¹⁵⁴

4. Religious Families and Mission Statements: A Different Constitutional Model?

Religious families are reportedly another type of family with whom mission statements are popular.¹⁵⁵ Covey himself is a religious person (a Mormon), who links his seven habits to principles found not only in his

148. Beth Stein, *Families Can Thrive with Dad at Home*, Tennessean, Sept. 27, 2001, at D8.

149. For a recent example, see Katharine Greider, *Father 'Hood*, N.Y. Times, June 18, 2006, § 14, at 1 (profiling several stay-at-home and work-at-home fathers in the East Village of Manhattan). See also Khurram Saeed, *More Men Opt for Mr. Mom Lifestyle*, J. News (Westchester County, N.Y.), June 17, 2001, at A1.

150. Stein, *supra* note 148.

151. *The Montel Williams Show: A Different Kind of Dad: Married Couples Discuss the Dad's Decision to Stay at Home with the Kids, and Single Dads Talk About Raising Their Kids on Their Own* (television broadcast July 16, 2002).

152. See *id.*; Saeed, *supra* note 149.

153. Saeed, *supra* note 149; see also Donna Kennedy, *Make Room for Daddy: Increasingly, Parents Are Reversing Roles and Fathers Are Staying Home with Their Children*, Press Enterprise (Riverside, Cal.), Sept. 30, 2001, at E1.

154. Kennedy, *supra* note 153 (mentioning online resources, such as www.slowlane.com and www.daddyshome.com).

155. Lewine, *supra* note 10.

own faith but in all the major world religions.¹⁵⁶ He contends that his own children benefited from being raised in a religious home and that religion affords children many benefits.¹⁵⁷ When he and his wife created their first family mission statement, it was on the day they were married and it included a reaffirmation that their marriage was a “covenant relationship,” not just a “contractual relationship,” and that this covenant was “not only with each other; it was also with God.”¹⁵⁸ When they had children and drafted a family mission statement, it included a reference to creating “a nurturing place of faith.”¹⁵⁹

Some of the family mission statements included in Covey’s book mention religious commitments, such as “[t]o worship together,” and “[w]e appreciate the grace of God.”¹⁶⁰ In media coverage of the FMS, some profiles are of religious families who market various “how to” books and products for other families, and who affirm their own religious faith as part of such a statement.¹⁶¹ When former National Football League linebacker Mike Singletary (now a motivational speaker and advocate of responsible fatherhood) was inducted into the Football Hall of Fame, news coverage featured his family mission statement, which includes this provision: “For our trust be not in our home, nor our money or status or knowledge, but in each other, and above all, in our Lord and Saviour Jesus Christ.”¹⁶²

The template for the mission statements of some religious families is not (or not only) the U.S. Constitution or the corporate mission statement, but “the pattern of Christ and His Church.”¹⁶³ The conservative Christian group, Focus on the Family, provides guidelines for “Developing a Marriage and Family Constitution.”¹⁶⁴ As the guidelines explain, a major benefit of writing a family constitution is that “[i]t follows the pattern of

156. See *supra* text accompanying notes 32-33.

157. *Religious Faith Vital in Today’s “Nation in Crisis,”* USA Today, Oct. 2, 1997, at D7 (reporting Covey’s views).

158. Covey, *supra* note 14, at 74.

159. *Id.* at 91.

160. *Id.* at 91-92.

161. See, e.g., Jacquelyn Brown, *Families, Same as Jobs, Need Energy, Goals*, Knoxville News-Sentinel, Mar. 18, 1998, at N3 (profiling a local couple, Daryl and Estraletha Green, who teach the course, “Family Management—Developing a Family Plan” and urge that the key is using the model established by God in the Bible); Longino, *supra* note 83 (profiling Elaine Hightower, author of *Our Family Meeting Book: Fun and Easy Ways to Manage Time, Build Communication and Share Responsibility Week by Week*, and her husband Ed, who have an FMS that states, “We believe in God, in taking care of each other, and in being good to other people”).

162. Don Pierson, *Singletary Still Leaves Impression*, Chi. Trib., July 30, 1998, at 8.

163. Eagle Family Ministries, *The Family Constitution*, http://www.efministry.org/family_constitution.htm (last visited Oct. 10, 2006) (advertising a seminar by Eagle Family Ministries, with the permission of Gary Smalley, who developed the “tool” of developing a family constitution).

164. These guidelines, available on Focus on the Family’s website, were first outlined by Gary Smalley in a Focus on the Family broadcast. See Focus on the Family, *Developing a Marriage and Family Constitution*, <http://www.family.org/married/comm/10009568.cfm> (last visited Oct. 9, 2006) (featuring Gary Smalley).

Christ and His church. *Ephesians* 5:23 explains that husbands and wives are to live by His example with the church.¹⁶⁵ Headship and submission are well understood by the military, where the leaders lay out clear plans for training and battle.”¹⁶⁶ *Ephesians* 5:23 reads, “For the husband is the head of the wife as Christ is the head of the church, his body, and is himself its Savior.”¹⁶⁷ It is part of the so-called Christian “household code,” a set of verses concerning the organization of the Christian household, which directs wives to “be subject to your husbands, as to the Lord,”¹⁶⁸ and be “subject in everything to their husbands,”¹⁶⁹ as “the church is subject to Christ”;¹⁷⁰ but also directs husbands to love their wives, as “Christ loved the church and gave himself up for her,”¹⁷¹ and love their wives “as their own bodies.”¹⁷²

The contemporary significance of these verses for family organization is a subject of some debate among Christians. A number of interpretations have been offered. Some Christian leaders retain this directive of male headship, but interpret it in terms of “servant leadership,” which combines headship with (following Jesus’s example) sacrificial love for wife and family. By contrast, some theologians and religious ethicists criticize Christian pro-family movements for not clearly renouncing male headship. They argue that, if *Ephesians* has any validity today, “it must be interpreted reversibly in all respects—as applying to the wife as profoundly as it does the husband,” and urge a shift to a model of equal regard and shared responsibility and leadership.¹⁷³

Whatever these interpretive debates, for Focus on the Family, and some other conservative Christian groups offering views on Christian marriage and family life, following biblical guidelines (in *Ephesians* and other parts of the Bible) teaches that some form of leadership by husbands and submission by wives should be part of a family constitution—and family practice.¹⁷⁴ Biblical verses concerning children’s duty to honor their

165. *Ephesians* 5:23.

166. Marriage Missions, Developing A Marriage and Family Constitution, http://www.marriagemissions.com/communication/developing_constitution.php (last visited Sept. 24, 2006).

167. *Ephesians* 5:23.

168. *Id.* at 5:22-23.

169. *Id.* at 5:24.

170. *Id.*

171. *Id.* at 5:25

172. These verses are part of a longer passage at *Ephesians* 5:21-32 about marriage, and *Ephesians* 6:1-9 about children and slaves.

173. Don S. Browning et al., *From Culture Wars to Common Ground: Religion and the American Family Debate* 284-85 (2d ed. 2000).

174. For example, in an online article about drafting an FMS, Teri Ann Berg Olsen includes among the relevant Biblical verses *Titus* 2:1-5, which provides: “Bid the older women likewise to be reverent in behavior, not to be slanderers or slaves to drink; they are to teach the young women to love their husbands and children, to be sensible, chaste, domestic, kind, and submissive to their husbands, that the word of God may not be discredited.” Teri Ann Berg Olsen, Knowledge House, Not Just For Kids, Focusing on the Family, <http://www.knowledgehouse.info/njfkfamily.html> (last visited Oct. 10, 2006). Some media

parents and fathers' duties to provide religious instruction also feature as inspiration for an FMS.¹⁷⁵ Husbands are admonished that a wife "wants her husband to be her spiritual leader," but also "is designed by God to feel secure only when she sees that her husband is not the final authority in their marriage, that he is looking to God for direction and guidance."¹⁷⁶ Practical advice offered to wives makes clear that submission does not mean powerlessness. As *Genesis* 2:21 teaches, woman was created because man needed a "helper suitable for him"; further, even though "man has been given the mandate of authority, woman has been given the mantle of influence," which is actually "more powerful than authority."¹⁷⁷ The model is not one of equal roles and authority but of gender complementarity.

Like Covey's arguments for a family constitution, some religious proponents of an FMS also draw an analogy to the role of the U.S. Constitution. One online guide, by the group New Life, argues that

[j]ust as our national constitution provides us with a deep sense of order and security (even though we may rarely stop to think about it), a simple mission statement can unite a home around certain *fundamental principles*. Having a written, objective set of standards greatly contributes to a family's peace, harmony, and security.¹⁷⁸

But another analogy drawn, for example, by Focus on the Family, is to Moses and the Bible: "The constitution is usually displayed in a prominent

reports on the FMSs adopted by religious families indicate a commitment by some religious families to male headship in the home. For example, a news story about Larry and Cynthia Cummings and their children quoted this provision of their FMS: "Show reverence and respect to the head in accordance with *I Corinthians* 11:1-3." Dawn Decwikiel-Kane, *Family Finds A Mission*, News & Record (Greensboro, N.C.), June 16, 1996, at D1. The husband, Larry Cummings, a member of a Promise Keepers task force, explained that being the family head does not mean bossing people around, but, that, "while every man has Christ for his Head, woman's head is man, as Christ's Head is God." *Id.* (invoking *I Corinthians* 11:3). *I Corinthians* 11:3 states, "But I want you to understand that the head of every man is Christ, the head of a woman is her husband, and the head of Christ is God."

175. Olsen, *supra* note 174 (citing *Ephesians* 6:1-4).

176. Marriage Missions, Thoughts for Men to Consider in Marriage, http://www.marriagemissions.com/married_men/thoughts.php (last visited March 16, 2006). This website, run by Marriage Missions offers a variety of writings with advice for husbands and wives. The Web site addresses the male reader as "you, the father, the leader of the home as not only the money maker, but the spiritual leader of your home." *Id.* A similar document addressed to wives advises them that: "A wife's relationship with her husband is to allegorize the church's submission to Christ. (*Ephesians* 5:22-24). Submitting to your husband is an act of faith." Marriage Missions, Thoughts to Consider for Married Women, http://www.marriagemissions.com/married_women/thoughts_married_women.php (last visited Sept. 24, 2006) [hereinafter Thoughts to Consider for Married Women] (emphasis omitted). The Web site counsels that being a "helper suitable for him," *Genesis* 2:18, does not mean being a "doormat" or having a lesser role: "[J]ust like with a skating dance team, the woman is not less important just because she doesn't lead. We're their partner in life who supports them." *Id.* I can't resist including this familiar idea: "Femininity is strength under control. Femininity is strength wrapped in a velvet glove. It doesn't insist on its own way, but most of the time it gets it." *Id.* (internal quotations omitted).

177. Thoughts to Consider For Married Women, *supra* note 176 (emphasis omitted).

178. New Life Cmty. Church, Developing a Family Mission Statement, <http://www.new-life.net/parent04.htm> (last visited Sept. 24, 2006).

household location, just as Moses and the Israelites kept a jar of manna as a memorial of God's provision."¹⁷⁹ The constitution makes family members mindful of "the Lord's contract with His children . . . that He will never leave them or forsake them, and He promises to meet their needs through His riches in glory (*Philippians* 4:19)."¹⁸⁰

These references to "objective" standards and to a contract between the divine and human indicate that a religious FMS is not so much the product of an open-ended family voyage of self-definition, but of aligning the family and its self-definition with the divine plan for it. One guide suggests that an FMS answers questions like, "What is it, Lord, that You would like us to accomplish as a family? . . . We know that You have a plan for us. . . . How would we define our unique family mission in life?"¹⁸¹ Similarly, Focus on the Family emphasizes alignment with divine law when it states that when a family prioritizes "its most important values" through a family constitution, it can avoid "falling short of God's high standards," and "[c]lear precedents will lead the way to unhindered obedience."¹⁸² If Covey advocates a family constitution as being a way to settle upon a set of principles to provide a template for the family's ends and values, Focus on the Family's guidelines extol a family constitution for "how it can bring unity under an agreed-upon set of rules."¹⁸³

This model of the FMS/FC emphasizes rules and obedience, and seems to place more focus on disciplining and controlling children than does Covey: A family constitution "gives security and stability for each . . . member," because children do not "experience as many unsettling surprises in discipline," and it can "become the policing force at home."¹⁸⁴ At the same time, some religious accounts seem to stress the participatory and deliberative aspect of an FMS/FC. For example, a family constitution "brings the family into unity" by helping families develop common ends, so they can "work together with a clear vision, purpose, and goal."¹⁸⁵ It "forces honorable communication," and "reduces prolonged arguments."¹⁸⁶ And it "can reduce stress and bring greater relaxation," because each family member finds comfort in knowing that everyone is aware of the other's needs and concerns.¹⁸⁷ This way of speaking about the process suggests that rather than a model of a pure discernment of divine will, a family is

179. Marriage Mission, *supra* note 166.

180. *Id.* (emphasis omitted).

181. New Life Cmty. Church, *supra* note 178.

182. *Developing a Marriage and Family Constitution*, *supra* note 166 (emphasis omitted).

183. *Id.* Can it be one might find here a replication, at the level of family constitution making, of an interpretive debate within constitutional law over rules versus standards, or rules versus principles? See Kathleen M. Sullivan, *Foreword: The Justices of Rules and Standards*, 106 Harv. L. Rev. 22 (1992).

184. Marriage Mission, *supra* note 166.

185. Eagle Family Ministries, *supra* note 163.

186. *Id.*

187. *Id.*

engaged in a participatory process that is attuned to the views and needs of family members.

5. Wealthy Families: Transferring Assets and Values to Children—and Fighting “Affluenza”

Family mission statements are proposed as a helpful tool for wealthy families, facing issues of wealth transfer to the next generation. The FMS is an antidote prescribed by various financial advisors to the problem of the high failure rate of transferring wealth from one generation to the next.¹⁸⁸ This failure stems, largely, from communication problems and a breakdown of trust, and from “inadequately prepared heirs.”¹⁸⁹ There is also a supposed new epidemic of “affluenza,”—that is, overconsumption, and the negative effects of “sudden wealth syndrome.”¹⁹⁰ (“Affluenza” is apparently the coinage of Jesse O’Neil, granddaughter of the former president of GM. Her memoir, *The Golden Ghetto*, chronicled the downside of wealth for children of the wealthy.)¹⁹¹ Anxiety over “affluenza” and the negative effects of wealth contributes to a turn to the FMS and to other means of ensuring successful wealth transfer. A bevy of financial institutions and financial advisors have offered an array of services, such as “life planning” (or “financial life planning”)¹⁹² and “family wealth counseling,”¹⁹³ on the premise that advisors need to understand a client’s life, goals, and principles, to help them make decisions about money and to deal with nonfinancial issues involving family wealth.

Along with the FMS, devices or methods such as the family meeting and the family office all seek to address a parental concern about how best to carry out the task of social reproduction—preparing children and grandchildren to be capable and responsible members of society. “Financial parenting” refers to the idea of helping parents who have acquired wealth to school their children in how to behave responsibly as child millionaires.¹⁹⁴ Proponents of this sort of financial parenting contend that FMS and family meetings are “no fad,” but a well-established practice for families whose wealth has survived several generations (or “legacy” families).¹⁹⁵ An article in a special series in *Robb Report Worth* magazine, “Your Family’s 100 Year Plan,” offered the examples of the Rockefellers,

188. Diana DeCharles, *Consider a Family Mission Statement on Handling Inheritance*, Times (Shreveport, La.), Nov. 15, 2003, at B6.

189. *Id.* (reporting on research by Roy Williams and Vic Preissper, authors of *Preparing Heirs* (2003)).

190. Monica Langley, *You Worked to Earn Your Millions. But Will Your Kids Be Spoiled Trust Babies?*, Austin Am.-Statesman, Jan. 8, 2000, at D1.

191. *Id.*

192. Ellen Uzelac, *Your Money or Your Life! “Life Planning” Is All the Rage Now, But What Exactly Is It?*, Adams Bus. Media Res., Feb. 1, 2003, at 40.

193. *Ernst & Young Expands Services for High-Net Worth Individuals; Enhancements Include Family Wealth Counseling and Concierge Services*, PR Newswire, Oct. 8, 2001.

194. *See id.*

195. Michael Sisk, *Same Time Next Year*, Robb Report Worth, Feb. 2004, at 86.

whose “philanthropic pursuits” are the “glue” that hold the family together, and the Sulzbergers, whose family business (the *New York Times*) is its “rallying point” for the family.¹⁹⁶

Why is the metaphor of the family as a business helpful? An article on the FMS, in the *Worth* magazine series, explains that, in most cases, the “object of the family mission . . . runs parallel to that of the well-managed enterprise: to organize our financial, intellectual, and human assets for the purpose of preserving and enhancing each of these in succeeding generations.”¹⁹⁷ The article further divides assets relevant to families into four categories: financial, human, intellectual, and civic ones; family planning and decision making address all of these.¹⁹⁸ The strategy, wealth management advisors explain, is to help affluent families achieve what they want in a holistic manner, developing “each family’s financial, intellectual, and social capital.”¹⁹⁹ Businesses and families, in other words, both carry out important tasks in cultivating human assets, or human capital.

Family stories and history, the *Worth* article suggests, “are the raw materials from which our own identities are hewn;” and the FMS is “at once the expression of this identity and a means of fulfilling the common goals that will enable us, as a group, to prosper and learn.”²⁰⁰ An FMS or family plan helps to record a family’s values and intentions and share them with family members.

Undeniably, one reason for advocating the FMS as part of financial planning is the premise that it will assist the very wealthy in more efficient wealth transfer—that is, the transfer of *financial* assets.²⁰¹ A 2004 report by Merrill Lynch on world wealth (widely mentioned in the press) found that “many ultra-wealthy families are creating ‘100-year plans,’ in which family members are treated as business divisions and emphasis is put on corporate-inspired guidelines such as family mission statements, governance structures and guidelines for communication.”²⁰² But another argument for the FMS is that it is a way to ensure successful transfer of family *values* from one generation to the next. An FMS helps to prepare

196. *Id.*

197. Brett Anderson & Thomas Kostigen, *100 Year Plan Part I: The Family Mission Statement*, *Worth*, Dec. 1, 2003, available at <http://www.worth.com/Editorial/Money-Meaning/Family-Matters/100-Year-Plan-Part-One-Who-We-Are-The-Family-Mission-Statement.asp>.

198. *Id.* (citing to the work of Lee Brower, founder of Empower Wealth).

199. Sisk, *supra* note 195, at 87 (reporting on programs developed by Lee Hausner, Vice Chairman of IFF Advisors, LLC, a “psychologist and affluent-family issues specialist”).

200. Anderson & Kostigen, *supra* note 197.

201. See *Super-Wealth Posts the Strongest Growth*, *Private Banker Int’l*, June 30, 2004, at 5.

202. *Merrill Lynch and Capgemini Report Sharp Increases in Wealthy North American and Asian Investors*, *Bus. Wire*, June 15, 2004 (quoting Alvi Abuaf, Vice President at Capgemini Group). For another example of press coverage repeating Mr. Abuaf’s statement, see Jenna Gottlieb, *Alternatives Seen Fueling Millionaire Growth*, *Am. Banker*, June 17, 2004, at 10.

heirs by establishing values concerning the meaning of and responsibilities attendant upon family wealth.²⁰³

In this focus on family self-definition, advocacy of the FMS for wealthy families parallels advocacy for its use by other families: The FMS helps families focus on what is important, what defines the family, and it engages children in formulating a vision of the family. Distinct to the discussion of the FMS for the wealthy is a focus on how values relate to family wealth.

How is an FMS educational? Financial advisors contend that engaging children from an early age in discussions about family values and the purpose of family wealth (or “wealth education”) and in writing an FMS will help to prepare them for responsible succession.²⁰⁴ The FMS, which explains that “[t]his is what our family is about,” is one of several steps that “[s]mart families” employ to ensure successful transition of wealth from one generation to the next.²⁰⁵ To teach responsibility, such families could set up a “Family Heritage Trust,”²⁰⁶ built around an FMS. The trust could pass on wealth and help heirs grasp the core values around which wealth is based.²⁰⁷ High net worth individuals can, in this way, fulfill an obligation to ensure that their heirs understand stewardship responsibilities that come with inheritance.

By involving children early on, the FMS may help children to be guided by the family’s values, so that they internalize those values when the time comes for them to be stewards of family wealth. Just as Covey stresses that family time and rituals help to transform an FMS into the family constitution, so a wealthy family’s mission may be reinforced and internalized through family rituals. Family meetings may be a place for capturing the collective wisdom of a family, a means by which future generations learn how to represent the family well. Successful family meetings, which combine work and fun, promote “a shared vision and common purpose that unite our families and keep them from drifting apart or splitting into factions.”²⁰⁸ Discussion of values at such meetings can lead to drafting an FMS or revising one.²⁰⁹

How participatory or democratic is the process of forming a wealthy family’s FMS? Two contrasting models appear in the literature. On the one hand, some advocates of the FMS as a tool for successful wealth transmission explain that this is not a democratic process, but rather a chance for the head of the family or creator of the wealth to pass on his or her vision. Thus, one financial advisor explains, “While family meetings are not democracies, they are an excellent opportunity for the head of the

203. DeCharles, *supra* note 188; Sisk, *supra* note 195, at 87.

204. See Sisk, *supra* note 195, at 87.

205. John D. Dadakis, *Wealth Transfer: What Smart Families Do*, Directors & Boards, Winter 2004, at 44.

206. *Id.*

207. *Id.*

208. Sisk, *supra* note 195, at 86.

209. Ruth Halcomb, *In the Same Boat*, Registered Rep., Feb. 2005, at 63, 69.

family to hear feedback. . . . Many heads of famil[ies] have refined their estate plan following family meetings.”²¹⁰ Another story reports that the FMS can help everyone understand what the creator of the wealth hopes his or her legacy will be.²¹¹ The *Worth* magazine story states, “While the head of the family is often the one to articulate its mission, each individual must internalize these ideas if they are to be acted upon, and so there must be agreement among members.”²¹² On the other hand, some accounts of generating an FMS out of a family meeting describe a more open-ended process, in which family values and goals emerge through deliberation. One advisor counsels that the FMS should involve every generation, and that the goal should be finding a “consensus as to what’s most important” with respect to estate and charitable planning.²¹³

Is a wealthy family’s FMS to be aspirational or hortatory, or will it be enforceable? Some financial advisors recommend that wealthy clients engaging in intergenerational financial planning have “legal documents in place that are coordinated with your family mission statement.”²¹⁴ For example, in contrast to the image of a “trust fund baby,” spoiled by a trust, a wealthy person could use an “incentive trust” to help instill values in his or her children and grandchildren and “prevent them from making undesirable choices.”²¹⁵ The “incentive trust” offers rewards, or financial incentives, to beneficiaries for accomplishing certain goals, based on what the settlor deems important.²¹⁶ Use of such trusts by the very wealthy is reportedly growing as part of a form of “financial parenting,” that is, structuring access to money in a way that tries to ensure that the next generation will understand and accept responsibility and parental values, including the value of money.²¹⁷ Offered as an antidote to the “affluenza” of heirs accorded instant wealth, incentive trusts have been called “the new trend for the millennium.”²¹⁸ As law professor Stanley Johanson explains, “[t]he idea is to reward kids for becoming productive members of society.”²¹⁹ But, he points out, such trusts can result in “dead hand control” by the creators of family wealth, who may draft such trusts when children

210. Gary Williams, Commentary, *Inheritance Issues Can be Handled at A Family Meeting*, Kan. City Daily Rec., May 26, 2005, available at http://www.findarticles.com/p/articles/mi_qn4181/is_20050526/ai_n14643899.

211. Cheryl Hall, *A Fistful of Dollars—Gone Bank’s Research Shows that Poor Planning Doomed Many Fortunes*, Dallas Morning News, May 29, 2005, at 1D, 7D.

212. Anderson & Kostigen, *supra* note 197.

213. John Wasik, *Charity Should Fit Family Plan*, Ventura County Star, Dec. 5, 2004, at 3 (quoting John Nersesian, Managing Director of Wealth Management for Nuveen Investments, Inc.).

214. Ann Cooke, *Plan for Finances of Family’s Next in Line*, Olympian (Olympia, Wash.), Sept. 7, 2005, at A10. Ann Cooke is a Financial Consultant with Smith Barney.

215. *Id.*

216. *Id.*

217. Edward Helmore, *Too Much, Too Soon*, The Guardian (London), Jan. 11, 1999, at 16.

218. Langley, *supra* note 190 (quoting Rodney Owens, a Dallas attorney).

219. *Id.*

are young or not even born and try to anticipate later possibilities for their children's lives.²²⁰

The turn to incentive trusts by the very wealthy stems in part from a fear that the money will ruin the next generation (for example, by destroying their incentive to succeed on their own) and that sudden wealth acquisition can put people off course from their fundamental values.²²¹ This concern also leads the wealthy to limit wealth transfer to the next generation and to reject the idea of creating a dynasty. Both Bill Gates and Warren Buffett, highly successful businessmen and the two wealthiest individuals in the United States, have a reported "common disdain for inherited wealth" (or, as Buffett puts it, "I don't believe in dynastic wealth").²²² Bill Gates, codirector (with his wife) of the largest charitable foundation in the world, has publicly stated both that he intends to give most of his money to causes in which he believes and that he "won't leave a lot of money to my heirs, because I don't think it would be good for them."²²³ Another motive for both men's philanthropy is the conviction that great wealth brings with it social responsibility.²²⁴ Thus, Buffett made headlines when he announced a recent \$31 billion gift to the Gates foundation.²²⁵

For those wealthy families seeking to transfer both assets and values to the next generation, an array of banking institutions, financial institutions, and advisors offer various services. Experts can help clients develop an FMS; they can facilitate family meetings; they can set up "family offices," by analogy to the family offices used by the wealthiest families;²²⁶ and they offer counseling to children of the wealthy who may suffer from sudden wealth syndrome or affluenza.²²⁷ One report on the use of the device of the "family office," a team of professionals servicing family accounts under one single umbrella, quipped that "the new aunts and uncles are tax accountants and trust and estate lawyers."²²⁸

6. Family Businesses: Family Mission Statements as a Key to Success

The family business is another form of family for which a family mission statement or constitution is sometimes used or prescribed. In recent years, some lawyers and financial advisors have recommended that family businesses adopt a "family constitution," which "sets up a governance structure for a family business, and reduces to writing rights and responsibilities of family members, establishing a set of shared expectations

220. *Id.*

221. *Id.*

222. Landon Thomas Jr., *A Gift Between Friends*, N.Y. Times, June 27, 2006, at C1.

223. Anderson & Kostigen, *supra* note 197 (quoting Bill Gates on stewardship).

224. Thomas, *supra* note 222.

225. *Id.*

226. John Parise, *Meet the Family*, Fin. Planning, May 2006, at 107-08.

227. Helmore, *supra* note 217.

228. *Bankers' Rich Language*, Gold Coast Bull. (Austl.), July 3, 2004.

for the entire family.”²²⁹ A family constitution, they argue, may help to deal with common conflicts and disputes that arise in family businesses (for example, over leadership, business tactics, and employment issues).²³⁰

Family constitutions and mission statements also feature as a prescribed remedy for the high failure rate of family businesses. Family businesses, or family firms, are a major component of the economy: “[B]etween 90-95 percent of American businesses are family owned or controlled,” and family businesses account for half of the U.S. gross national product.²³¹ Only 30% of family businesses, however, survive to the second generation, and even fewer, to the third generation.²³² “Successful families are bound together more by strong values and purpose than by shared business ownership.”²³³ Shared values are the glue that keeps family businesses going across generations.²³⁴ Often, values helpful to the family are values helpful to the business.²³⁵ A written FMS is a factor common to the most successful family firms, but most family businesses lack an FMS. The FMS identifies and aids in perpetuating a family’s core values and, ideally, emerges from a participatory process engaging the entire family, or at least a representative group of it.²³⁶ Therefore, the belief goes, an important step that family businesses should take to ensure the survival of the business to succeeding generations is drafting an FMS.

Some advocates of an FMS for family businesses draw an explicit analogy to the U.S. Constitution. One advisory service for family businesses explains, “Like the U.S. Constitution, Family Mission Statements can also be amended and updated when necessary. However, the carefully crafted statement will not require frequent amendment because the essence of the family—the traditions, goals, and values—does not change.”²³⁷ The FMS is a “foundation to which the family can continually return.”²³⁸

Parallel to the discussion of why wealthy families should use FMSs, accounts of how FMSs are deployed by family businesses stress family

229. James John Jurinski & Gary A. Zwick, *How to Prevent and Solve Operating Problems in the Family Business*, Prac. Law., Mar. 2001, at 38.

230. *Id.*

231. Joseph E. McCann III, et al., *Strategic Goals and Practice of Innovative Family Businesses*, 39 J. Small Bus. Mgmt. 50, 50 (2001).

232. Anne M. McCarthy, *Only Three in 10 Family Firms Survive Transition to 2nd Generation*, The Daily Rec. (Baltimore, Md.), Mar. 25, 2005, available at http://www.findarticles.com/p/articles/mi_qn4183/is_20050325/ai_n13470269.

233. John L. Ward & Craig E. Aronoff, *How Successful Business Families Get that Way*, Nation’s Bus., Sept. 1994, at 43.

234. Marcia H. Pounds, *Shared Values Are Key to Keeping Family Business in Family*, Sun-Sentinel (Fort Lauderdale, Fla.), Mar. 28, 1997, at D3.

235. Craig E. Aronoff & John L. Ward, *Why Continue Your Family’s Business?*, Nation’s Bus., Mar. 1998, at 72, 74.

236. DeCharles, *supra* note 188; McCarthy, *supra* note 232; Pounds, *supra* note 234.

237. Robert L. Bates, The Family Mission Statement, <http://www.horwath.com/HW/Global+Navigation/Publications/Publications/Postings/The+Family+Mission+Statement.htm> (last visited Sept. 24, 2006).

238. *Id.*

values, the nonfinancial aspects of family economic enterprise, and the link between successful social reproduction and successful wealth transfer. Another parallel (to anxiety over “affluenza”) is the premise that increased prosperity often weakens family bonds. For example, one explanation for why family businesses face such problems with successful survival to future generations is the “family-business paradox.”²³⁹ In the initial generation, a family business affords family members a strong common identity and common interest, but family cohesion wanes by the second or third generation. Two consequences are that leadership and family relationships are taken for granted, and bonds of love and common interest erode. Successful families seek to avoid these problems by paying attention to family for its own sake, through focusing on family values and goals.²⁴⁰

When a family tries to focus on family for its own sake, a relevant question is how owning a family business may serve the family’s mission. For example, the family business may be seen as a means of achieving the family’s goals. Reportedly, families most committed to the continuity of their family business share three characteristics: (1) “They believe that owning the business helps serve their family’s missions; [(2)] they are proud of the values exemplified by the business; [and (3)] [t]hey believe that the business is contributing intrinsic value to society.”²⁴¹ The FMS is a way to share and give written expression to understandings of mutual goals. Successful family businesses often have a sense of stewardship, both with respect to strengthening the family and giving back to society.²⁴²

As with the discussion of successful transfer of family wealth, so too, with family businesses, the emphasis is on human, intellectual, and social capital and potential as well as on financial assets and profits.²⁴³ Thus, an FMS might include a commitment to support one another so that each may achieve his or her fullest potential.²⁴⁴

Educating the next generation is a primary purpose for developing an FMS and also a key goal of the family meeting, out of which an FMS may emerge. This reinforces the point that social reproduction is at stake in the survival of the family business. Thus, teaching children about how wealth was acquired and what the family stands for are vital tasks. Teaching children “the competencies and responsibility that accompany wealth” can include telling and retelling “the family’s most important stories.”²⁴⁵ This idea of telling family stories parallels the emphasis, in other contexts in which the FMS is advocated, upon the ritual of the family meeting, or

239. Craig E. Aronoff & John L. Ward, *Beware of the Family-Business Paradox*, *Nation’s Bus.*, Oct. 1994, at 80.

240. *Id.* at 80-81.

241. Aronoff & Ward, *supra* note 235, at 72.

242. *Id.* at 74.

243. *Acclaimed Presenters Shared How to Grow Business by Concentrating on People and Practices—Not the Competition*, *Progressive Grocer*, May 1, 2004, at 20.

244. *See id.*

245. *Id.*

"table talk," as a key ingredient for successful families. Family meetings, ideally, have an educational component as well as time for family fun. Here, too, we see a parallel to Covey's vision of family meetings and family rituals.

How participatory is the process? Some discussions of the FMS suggest a democratic process, involving all members of the family in annual (or more frequent) family meetings, out of which an FMS may grow. Thus, one article contends, "[T]he [family mission] statement has value only if it reflects input from everyone who has a stake in the company's success. If the founder simply dictates what the statement will say, the opportunity to engage the entire family in an effort to work toward common goals will be lost."²⁴⁶ A "how to" article in *The Practical Lawyer* advises, "Because of its democratic nature, most constitutions are forged through consensus after a family meeting or series of meetings."²⁴⁷ On this model, generating an FMS helps a family focus on the big picture by participating in dialogue and give-and-take.

Another model is more one of representative government. A "family council" is a device that many small and mid-sized family businesses have found helpful.²⁴⁸ Similar to a board of directors of a corporation, the family council may be designated by a committee of family members or elected.²⁴⁹ However it is formed, "one of its most important functions is to articulate the family's core values," which may be developed in an FMS.²⁵⁰ It may serve as a "pillar of family business government," be a forum for promoting the welfare of family members and resolving family conflicts, and also foster the development of young family members.²⁵¹

As with the successful transfer of family wealth, the challenge of a successful transfer of the family business invites the proliferation of many outside institutions and actors poised to assist.²⁵² Professional advisors may help to plan and facilitate family meetings, at which an FMS may be drafted. Family businesses may also use a "family office," which is a centralized financial planning group that may employ professional managers.

246. Mary Curran, *Create a Family Mission Statement to Keep Your Business on Course*, San Diego Bus. J., Dec. 13, 2004, at A3.

247. Jurinski & Zwick, *supra* note 229, at 38.

248. Ivan Lansberg, *Governing the Family Company*, 24 Directors & Boards 45 (2000).

249. Elfren S. Cruz, *Framework: Family Council for a Business*, BusinessWorld, Jan. 11, 2000, at 5.

250. Lansberg, *supra* note 248.

251. *Id.*

252. See, e.g., BDO Seidman Consultants Say, *Most Family-Owned Businesses Fail After First Generation Because Founders, Children Can't Agree on Succession Plan*, PR Newswire, May 12, 1998 (by BDO Seidman, LLP); Mark McNally, *Facilitator Can Guide Family Business Retreat*, Capital Times (Madison, Wis.), Jan. 13, 1999, at 1C (by President of McNally CPAs and Family Business Consultants).

II. EVALUATING FAMILY SELF-CONSTITUTION AND THE CONSTITUTION OF THE FAMILY

A. *The Formative Role of Families in the Old (and New) Constitutional Order*

How does the phenomenon of families writing—and being urged to write—mission statements and family constitutions mesh with the place of families in the constitutional order? Family constitutions and family mission statements speak to a recognizable role played by families in the constitutional order: the formative task (or what I have called the “formative project”) of providing the care, education, and direction that enables persons to be capable and responsible members of society.²⁵³ For the many kinds of families drafting—or being urged to draft—an FMS/FC, a common concern is with this formative project—that is, with social reproduction.

Another common theme is the conviction that families must define themselves and must stand for *something*. In the face of various perceived threats—from within and without—to family solidarity and unity and to parents’ capacity to teach values, families turn to conscious self-definition and identification of key values. Another premise is that families may usefully imitate other basic institutions of society, such as the corporation or the national polity, by creating a guiding document.

How does this quest for self-definition fit within the constitution of the family? The family’s role in the formative project of social reproduction is evident in the U.S. Supreme Court’s jurisprudence about the family. Parents’ liberty interest in “the care, custody, and control of their children,” the Court observed in *Troxel v. Granville*, is “perhaps the oldest of the fundamental liberty interests” that the Court has recognized.²⁵⁴ In *Troxel*, the Court invoked *Meyer v. Nebraska*, which recognized that parental “liberty” included a parental right to “establish a home and bring up children,” and to “control the education of their own.”²⁵⁵ The Court also quoted the famous language from *Pierce v. Society of Sisters*: “The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”²⁵⁶ *Troxel* also invokes *Prince v. Massachusetts* on this same point: “It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”²⁵⁷

253. See McClain, *supra* note 1, at 4-5.

254. *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

255. *Id.* (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923)).

256. *Id.* (quoting *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534-35 (1925)).

257. *Id.* at 65-66 (quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)).

What obligations? Presumably, the Court could intend the obligations of being a member of a family, of a particular community, of a religion. Preparing a child to take his or her place in society entails transmission of important moral and cultural values. Moreover, the Court's reference to these "additional obligations" and its disavowal of the idea that the child is the "mere creature of the state" signals that the state and parents have complementary roles to play in social reproduction. This family role serves an important political function: "[t]he preservation of social diversity" as a check on governmental power.²⁵⁸

This notion of the family as preserving diversity seems to be in some tension with the common idea that families, in our political order, are—or should be—"seedbeds of civic virtue."²⁵⁹ As I elaborated in my book, *The Place of Families: Fostering Capacity, Equality, and Responsibility*, in our constitutional order, this image captures the idea that, although the child is not merely the creature of the state, when the family serves its educative function, it supports the constitutional democracy by preparing children for eventual personal and democratic self-government.²⁶⁰ The Court's reference to preparing children for "additional obligations" signals that parents prepare children to be responsible members of particular families and communities, which may or may not dovetail with preparation for being good citizens. But this parental education could also include inculcating a conception of good citizenship, flowing out of parents' own sense of civic duty and responsibility. One premise may be that there will be considerable overlap between preparing one for being a good person and for being a good citizen. Particularly when this parental freedom includes directing a child's religious education, one premise may also be that religious obligations and values will support good citizenship.

Behind the notion of families as "seedbeds of civic virtue," I argue in *The Place of Families*, is the premise that families may be "a place or source of the growth and development of a wide range of human capacities, including skills, attitudes, and virtues."²⁶¹ Families "are places of moral learning that may create the good person and may contribute to creating the good citizen."²⁶² They help their members to develop habits of personal self-government, or governing the self, that may also contribute to capable, responsible democratic self-government. The care and nurture provided in families create a foundation that helps to develop skills and traits of character important to personal and, often, to democratic self-government.²⁶³ For example, through a caring, close relationship, parents

258. Anne C. Dailey, *Constitutional Privacy and the Just Family*, 67 Tul. L. Rev. 955, 1022 (1993).

259. For a discussion of this depiction of families, see McClain, *supra* note 1, at 50-84.

260. *Id.*

261. *Id.* at 65.

262. *Id.* at 67.

263. *Id.* at 64-84. My approach draws on feminist analysis of the care-giving role of families in addressing basic human dependency—or what Martha Fineman calls "inevitable dependencies." Martha Albertson Fineman, *The Neutered Mother, the Sexual Family, and*

nurture qualities like empathy and trust, which may blossom into civic virtues of reciprocity and mutual respect. Nurturing the capacity for autonomy may also lay a foundation for the political skill of critical reflection.²⁶⁴ But, as I further point out, the state has constitutional authority to educate children for good citizenship and may play a complementary role in “fostering civic virtues and promoting public values that families and other institutions of civil society may neglect or even reject.”²⁶⁵ *Brown v. Board of Education*, for example, stresses the importance of public education as instructing children in cultural and democratic values, as well as preparing them for success in life.²⁶⁶

This tension over the civic role of families raises the question of congruence, or whether family values or family governance must replicate democratic values and governance.²⁶⁷ This tension is likely to remain a feature in any new constitutional order. In invoking the early parental liberty cases, *Troxel* retains the image of families as a buffer zone, a site separate from the state in which religious freedom and parental liberty may flourish. But public rhetoric, in passionate debates over family definition and family form, about preserving families as the most basic fundamental unit of society supporting the political order shows the continuing hold of a common hope or expectancy that families, indeed, are—or should be—“seedbeds of civic virtue.” How might a new constitutional order address this issue? In an attempt better to focus constitutional family law on the “connection between early care giving relationships and the reasoned thinking of adult citizens,” Anne Dailey has recently called for a “developmental perspective,” which would build on *Brown* and on the early parental liberty cases to emphasize that the polity depends upon the proper cultivation of children’s “hearts and minds.”²⁶⁸ In an intriguing parallel, the turn to FC/FMSs appeals to inscribing on the hearts and minds of family members a family’s core purposes and values.

B. *The Formative Project and Family Self-Constitution*

Family constitutions and mission statements mesh fairly well with the conception that families play a formative role in our political and

Other Twentieth Century Tragedies 161-76 (1995). It also draws on John Rawls’s political liberalism, in which families, as one of society’s basic institutions, play a “prior and fundamental role” in “establishing a social world within which alone we can develop with care, nurture, and education, and no little good fortune, into free and equal citizens.” John Rawls, *Political Liberalism* 43 (1996). This care-giving also fosters families’ civic role: families have the important task of ensuring the “nurturing and development” of children, who, as citizens, must “have a sense of justice and the political virtues that support political and social institutions.” John Rawls, *The Idea of Public Reason Revisited*, 64 Chi. L. Rev. 765, 788 (1997).

264. See McClain, *supra* note 1, at 68-71.

265. *Id.* at 80.

266. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

267. I discuss this in McClain, *supra* note 1, at 73-75.

268. Anne C. Dailey, *Developing Citizens*, 91 Iowa L. Rev. 431, 432-34 (2006).

constitutional order. First, the impetus to make such documents reveals a pervasive concern with defining and transmitting values—an important component of social reproduction. Second, the formative role of family in fostering capacity is seen in commitments, in such FMS/FCs, to care and nurture and to foster growth and responsibility. Covey shares with readers his own family's mission statement, which includes a commitment to "provide opportunity for each individual to become responsibly independent, and effectively interdependent, in order to serve worthy purposes in society."²⁶⁹ In his book, another family's text affirms that, "We support each other fully in our seen and unseen potential" and "[w]e are a family where we can continually grow in mental, physical, social/emotional, and spiritual ways." This same family statement affirms "diversity of race and culture" as a "gift."²⁷⁰ Yet another FMS indicates that the family will "[r]espect and accept each person's unique personality and talents," and "[c]reate an environment where each of us can find support and encouragement in achieving our life's goals."²⁷¹ References to the family mission as developing family members' human capital and human assets also embrace fostering capacity as a family task.²⁷²

I have argued that one way in which families carry out their formative role is by nurturing skills and dispositions, such as trust and reciprocity (for example, the Golden Rule), that may help children, as adults, in social and civic relationships beyond the family.²⁷³ Thus, it is notable that the literature about drafting FMS/FCs and reinforcing them in every day family life through rituals like family time or family meetings identifies developing trust and cooperation and a sense of commitment as an end fostered by such processes.²⁷⁴ Rules for interpersonal dealings within the family are often part of mission statements: for example, "[t]o always be kind, respectful, and supportive of each other, [t]o be honest and open with each other" and "[m]aintain patience through understanding. Always resolve conflicts with each other rather than harboring anger."²⁷⁵ Cultivating these sorts of interpersonal skills could, indeed, foster skills helpful for social cooperation more broadly. And if it is true, as relationship education experts counsel, that all family relationships experience conflict, but learning how to handle conflicts is what

269. Covey, *supra* note 14, at 91.

270. *Id.* at 92.

271. *Id.*

272. See *supra* notes 197-99 and accompanying text.

273. McClain, *supra* note 1, at 64-73.

274. See, e.g., Covey, *supra* note 14, at 77-79, 98-99 (stating that developing an FMS can foster cooperation); *id.* at 129-66 (describing how family time builds trust by making the FMS the daily family constitution and giving structure to family life); Aronoff & Ward, *supra* note 235, at 72 (stating that drafting an FMS can help families with a family business address problem of "fragile family trust").

275. Covey, *supra* note 14, at 92, 94.

distinguishes successful from unsuccessful marriages,²⁷⁶ then this interpersonal skills emphasis may have benefits for adult partners as well as for parent-child relationships. In addition, to the extent that the process of drafting an FMS/FC is a participatory and democratic one, the skills learned in such a process could contribute to the capacity for democratic self-government.

If family self-constitution reveals a concern for fostering individual capacity of family members (personal self-government), then does it also bear on democratic self-government and the place of families in the broader society? To be sure, bearing the input of children, FMS/FCs may include some commitments that are far different from what scholars associate with a nation's constitution making: "to make sure we tell lots of jokes" and "[o]ur family is happy and has fun together."²⁷⁷ However, family self-constitution often seems to include attention to responsibility to the broader society. Covey, as noted above, stresses the stewardship responsibilities of families, alleging that if functional families helped dysfunctional families, most social problems would be solved. And in the various contexts examined above, part of an FMS/FC often entails looking beyond the family itself to responsibilities to the broader society (for example, philanthropy, community service, or civic-minded business practices).

These social responsibilities that families embed in their FMS/FC could be among the "additional obligations" to which the Supreme Court refers in *Pierce*. This suggests that choosing to write an FMS/FC may not only serve the purpose of nurturing solidarity and reciprocity and reinforcing identity within the family (or what Robert Putnam calls "bonding social capital"), but may also encourage the development of broader identities and wider reciprocity outside the family (what Putnam calls "bridging social capital").²⁷⁸

1. Some Questions About Family Self-Constitution

The enterprise of family self-constitution, through family mission statements and family constitutions, raises some useful questions about the formative role of families and of the sometimes contrasting models of how families carry on the tasks assigned to them in the political order. I will address these by raising some questions about certain tensions in the literature about family constitution making. I will use the distinction between the natural (universal, traditional) family and the constructivist family as a way to highlight these tensions.

First, the premise that the FMS/FC helps families identify and live by their purpose and core values assumes an acculturation or socialization

276. Scott M. Stanley, *Making a Case for Marriage Education*, 50 Fam. Relations 272 (2001). For more on marriage education, visit the Web site of the Coalition for Marriage, Family and Couples Education, <http://www.smartmarriages.com> (last visited Oct. 31, 2006).

277. Covey, *supra* note 14, at 85, 92.

278. Robert D. Putnam, *Bowling Alone* 22-24 (2000).

process. How does this occur? One model of how social reproduction occurs is that family and religion, as pillars of civil society, inculcate values and virtues in children. Education is a function of the transfer of values, or the instilling of values in children. Certainly, it is not as simple as imprinting parental values onto children, but the premise of this model of education is that parents pass on their values. This is one way to read the early Supreme Court cases about parental liberty to educate children and prepare them for “additional obligations”—a right and duty of parents to engage in value transmission.

Sometimes, the image of the “natural family” is used to connote this ideal of the marital family, grounded in religion, in which parents educate and pass on values to the next generation.²⁷⁹ For example, when the “traditional family”—understood as the marital family—is described as a fundamental unit of society, a constant in every civilization, the family form itself—marriage—seems to vouchsafe family function. That is, calls to protect the “natural family” or “traditional family” against changing the definition of marriage (through same-sex marriage) or expanding the definition of parent seem to assume that the traditional family will possess and generate virtue.

Some of the literature about the FMS/FC suggests this natural family/transfer of values model. Covey bases his seven habits on supposed natural and universal principles, and uses the imagery of a family aligning itself with such principles. In some family mission statements by religious families, in which there is an explicit appeal to a Biblical plan for family governance, the process is not so much one of discovery as properly embracing a religious model for family. The imagery of family leaders piloting a plane or boat also affirms a strong leadership role for parents. In the context of family wealth transmission, parents turn to such devices as incentive trusts precisely out of concern that the next generation may not adhere to or live up to family values important to the wealth creator. The benefactor uses incentives to make sure that his or her values pass on along with the money.²⁸⁰

A second model, also evident in the literature about the FMS, is that, in an era of time pressures and a “family-hostile” environment, family must be constructed. Parents need to engage in conscious reflection about values and what they want to pass on to their children. Not only that, but the entire family should also be involved in the process of discovering and clarifying “what this family is about,” “what we stand for,” and “what we value.” These types of stories about FMS/FCs emphasize that a family should engage in self-definition, or self-authorship. Indeed, the FMS is about being self-authoring in your personal and family life. This process sounds fluid and open: Through a mutual voyage of self-discovery, the members of a family decide what is important to them, what values they embrace,

279. See Allan C. Carlson & Paul T. Mero, *The Natural Family: A Manifesto*, 19 *The Fam. in Am.*, Mar. 2005, at 13-14, available at www.familymanifesto.net/fm/manifesto.asp

280. See *supra* text accompanying notes 215-20.

and generate a guide to future decisions and behaviors. This entails conscious reflection on what a family is “about”—the “what” of a family. It is also less hierarchical and “natural” than a model of simple value transfer from the old to the young. Again, this second model suggests a constructivist vision of family. Family life and family values are not scripted or given; they are intentionally and consciously created and constructed.

Parallel to this idea of the constructed family is the constructed self. Personal transformation, which entails conscious reflections on one’s ends and generating a personal mission statement, is a vital part of Covey’s system.²⁸¹ Thus, Covey advises people to ask, “Are my actions based on self-chosen values or on my moods, feelings and circumstances?”²⁸²

It may be useful to compare this constructivist approach to family with what religious ethicist Don Browning and his coauthors, in *From Culture Wars to Common Ground*, call a dialogic approach to family.²⁸³ In their view, the “postmodern context of families” today includes a “democratization” of intimacy, work, value formation, and parental authority; family formation, today, entails forms of “negotiation,” as spouses engage in a mutual, “democratic,” and “critical dialogue” about their own personal narratives and histories, and the vision they have of family life.²⁸⁴ Moreover, families are “communities of interpretation,” and, as children grow and move toward “mutual authority with their parents,” they become “involved in the interpretive task.”²⁸⁵ To be sure, families, on this view, are linked to tradition, because they engage in “critical dialogue” about the meaning of family histories and societal and religious images of family; but they are also engaged in a process of construction, a self-conscious effort to fashion family life. This dialogic model helpfully recognizes that families do not write on a clean slate, while it also affirms the place of cultural reflection on tradition and of active construction of family life.

The tension between the traditional (natural) family and the constructivist family is also evident in the difference between the ritual of the family meal and the new ritual of the family meeting. If an earlier generation regularly ate together, engaged in “table talk” that built family bonds, and passed on

281. One of the apparent reasons for Covey’s popularity with corporations is his focus on individual self-improvement, which then spills over into benefits for the organization. Timothy K. Smith, *What’s So Effective About Stephen Covey?*, *Fortune*, Dec. 12, 1994, at 116. The habits, or principles, Covey explains, work from the inside out: You build up “highly effective people” to make for a “highly effective organization.” *Id.* This emphasis on personal transformation also draws criticism of Covey: that his emphasis upon personal solutions ignores larger structural factors and extols personal responsibility to the neglect of other forms of responsibility. *Id.* at 126.

282. Stephen Covey, “*The 7 Habits*” 11 Years Later: *Applying the Habits in a Technological World*, *Mgmt. Q.*, Mar. 22, 2001, at 2.

283. Browning, *supra* note 173, at 282-92.

284. *Id.*

285. *Id.* at 298.

important family stories,²⁸⁶ a newer generation must schedule and plan for a weekly family meeting, and may need the help of various “how to” products (mentioned above) to make such meetings a success. Putnam has reported on the declining number of Americans who regularly eat dinner together; other reports chronicle a decline in the amount of family conversation.²⁸⁷ Yet studies suggest that the routine of eating dinner together can have significant benefits for children. It fosters a close relationship with parents, and it seems to be a protective factor against various risky behaviors.²⁸⁸ But this family routine also seems out of reach for the pressured parents and heavily scheduled children who feature in media stories and in everyday life. It is striking here that departures from the gendered division of labor in the “traditional” family due in significant part to women’s changing roles in society are one spur to construct analogues to older family rituals that allow for family cohesion and solidarity under changed social circumstances.

Further evidence of the tension between the traditional/natural and the constructivist model of the family is seen in the contention, in discussions of the FMS/FC, that family life cannot be taken for granted, but requires adequate attention and proper tools to ensure success. Covey and others contend that changes in family patterns of work and home, as well as an array of “outside” forces threatening families, necessitate this self-conscious focus on the family. By contrast, in the 1940s and 1950s, when the rest of civil society is said to have supported the family, and virtue was supposedly more abundant, such self-conscious efforts by families were not essential. People are urged to put the same energy they put into work into their family. They are advised to borrow from the business world tools like a mission statement or a council. This advice stems from the premise that just as other organizations need a plan, so too do families.

Successful family life, on this view, depends on having the right skills and tools. As John Covey, brother to Stephen, advises, “Successful families do not just happen. They take planning, prioritizing, sacrifice and time.”²⁸⁹ Stephen Covey concurs: “The family is a key unit that needs to be worked on, but is often neglected.”²⁹⁰ This emphasis on skills and tools has some parallel to the marriage-education movement and to the recent federal governmental “healthy marriage” initiative, which seeks (as a component of welfare policy) to promote education in the skills needed for healthy

286. Glendon, *supra* note 106, at 174.

287. Putnam, *supra* note 278, at 100. I discuss the importance of the family meal in McClain, *supra* note 1, at 66-68.

288. See McClain, *supra* note 1, at 66-67 (discussing research).

289. Pat Hansard, *Family Comes First: Stephen Covey's "Seven Habits" Aren't Just for Businessmen Anymore*, Alberta Rep., Mar. 23, 1998, at 31 (quoting John Covey).

290. Michelle Tan, *Covey: Families Need Attention*, St. Cloud Times (Minn.), Oct. 2, 2000, at B1.

marriage.²⁹¹ Notably, along with Wade Horn, chief architect of the “healthy marriage initiative” at the Department of Health and Human Services, Covey was a speaker at a Herigate Foundation event on marriage promotion and proposed an FMS as one practical way families and couples could improve their relationships.²⁹²

The contrast between the natural and constructivist family is also evident in the tension between the universal and the particular in FMS/FC. On the one hand, Covey touts the seven habits as based on natural laws and timeless, universal principles, found not only in his own Mormon religion, but in all the major world religions. Families who adopt the Seven Habits can be aligned with these universal principles. And the FMS helps them build principles “right into the very structure and culture of the family.”²⁹³

On the other hand, one premise is that each FMS/FC will be unique because it is generated by a family with unique characteristics. The habits themselves address family process: Generating the FMS is to be a participatory, open process, and each family will have its unique vision and values. Indeed, Covey contrasts principles, which are natural and universal, with values, which are social and subjective. Is it even possible to speak about core values associated with families in general, or are all family values highly subjective? Because of Covey’s distinction between principles and values, Alan Wolfe contends that Covey is actually radically subversive and quite distinct from conservative proponents of a return to “family values.”²⁹⁴

This tension between the natural and constructivist, and universal and particular, is also evident in the context of how the literature handles family diversity. On the one hand, Covey clearly views divorce and other kinds of family “dysfunction” to be at the core of most social problems²⁹⁵ and, as his contrast between the 1940s and 50s and the world today indicates, views many social changes in a negative light. He has been criticized for his gender traditionalism. His own family life has followed a gendered division of labor in which his wife was a stay-at-home mother and he frequently toured and lectured.²⁹⁶ Faced with the criticism that his imagery of a family needing a pilot contemplates a male pilot and female copilot, he

291. See Deficit Reduction Act, 42 U.S.C.A. § 603(a)(2) (2005). Information about the “healthy marriage” initiative is available at <http://www.acf.hhs.gov/healthymarriage/index.html>.

292. See Wetzstein, *supra* note 33.

293. Covey, *supra* note 14, at 142.

294. Alan Wolfe, *White Magic in America*, New Republic, Feb. 23, 1998, at 34. Wolfe contends Covey’s philosophy is a form of “white magic,” a promise to reveal to people what is actually already there, but hidden.

295. See, e.g., Noemi Herrera, ‘7 Habits’ Author to Speak About Strong Families, St. Cloud Times (Minn.), Sept. 30, 2000, at B1.

296. Kitchen, *supra* note 31.

has stated that he believes husband and wife should be equal partners.²⁹⁷ At the same time, he has stated his belief that, when there is a young child, the mother should be the parent in the home with the child.²⁹⁸ And, as noted above, same-sex marriage conflicts with his view that children need a mother and a father.

On the other hand, Covey and other spokespersons from his Franklin Covey Company insist that the Seven Habits are universal and thus will fit all kinds of families (e.g., single-parent, blended, divorced; the apparent exception is gay and lesbian families)—not just the more “traditional” marital family. The “power” of the Seven Habits, he contends, is that they work for “all families” because they are principles, not practices.²⁹⁹ Thus, Covey’s message seems to be mixed: the bad news is that we live in an era of rampant family dysfunction; but the good news is that most families—not just traditional marital families—can have happier, more functional lives if they apply the Seven Habits. Other proponents of the FMS/FC also claim that these devices can help in a wide variety of family situations beyond the “traditional” family: family businesses, single-parent families, blended families, families that defy gender conventions with stay-at-home dads, and lesbian and gay families. This premise that families, through the process of family self-constitution, can improve their situation, whatever their form, seems to run contrary to the premise that family form is a reliable proxy for function or dysfunction.

The fact that the basic concept of a mission statement or constitution is proposed for such a diverse array of family situations may suggest a valuable plasticity. Or this very expansiveness of the concept may make any generalizations about its utility and meaning impossible.

The issue of how family diversity features in the literature about the FMS/FC brings us back to a puzzle about the place of families. A basic premise about the place of families in the political and constitutional order is that families are fundamental because of their formative role in shaping persons to be capable and responsible members of specific communities and of the polity. But, as the literature on FMS/FC confirms, families are diverse both in the forms they take and in the values they espouse and ends they pursue. A continuing puzzle about families is how families are both a fundamental unit of society and fundamentally diverse. How are vital social bonds and civic virtues, which may unite members of society, nurtured by diverse families? This is a puzzle that is likely to remain, and warrant continuing attention, in any new constitutional order.

297. *Today Show: Organizational Consultant Stephen Covey Discusses His New Book, “The 7 Habits of Highly Effective Families”* (NBC television broadcast Oct. 9, 1997) (transcript on file with the Fordham Law Review).

298. *Id.*

299. *Public Eye with Bryant Gumbel*, *supra* note 75.

III. CONCLUSION

In this article, I have argued that the phenomenon of families writing—and being urged to write—family mission statements and family constitutions merits attention by those considering whether the United States is entering a “new constitutional order” and, if so, what the place of families and other institutions of civil society will be in such a new order. The constitution of the family, in the sense of battles over the legal definition of what counts as a family and whether family self-definition will warrant governmental recognition and support, is likely to remain an important and contested issue in any new constitutional order. This article invites attention to a different aspect of family constitution: why many different kinds of families draft—and are advised to draft—mission statements and constitutions. I have demonstrated that one common premise is that such founding documents may help a family to define itself and to articulate its core values and purposes. In this sense, the turn to family mission statements and constitutions illustrates how families envision themselves as involved in the process of social reproduction, a core task assigned to families in our political and constitutional order.

The self-conscious quest for family definition, I have suggested, reveals a constructivist model of family: that families must engage in a process of conversation, deliberation, and reflection on what they are “about.” Within the literature on family constitution making, we find this model in intriguing tension with a natural model of family, by which families simply engage in direct value transfer from one generation to the next. This constructivist notion of families is also evident in the proposition that successful families do not just happen, but are a project requiring work and a set of skills. This notion of working on the family may reveal how fully the world of work penetrates into family life. It is also consistent with an emphasis, in recent family and welfare policy, that successful family life and “healthy marriage” depend on knowledge and a proper set of skills. The appeal of family mission statements and constitutions may also suggest the allure of a constructivist model of the self, evident in the popular culture’s emphasis upon self-help and self-transformation.

A fruitful avenue of further inquiry about the constitution of the family would be to consider whether it is possible to develop a “jurisprudence of associations.”³⁰⁰ Such a jurisprudence would explore how best to understand families as associations and their place within the broader domain of civil society, with its myriad forms of association—religious institutions, cultural institutions, voluntary associations, and community organizations. Notably, one impetus to families borrowing from the

300. Both Martha Minow and David Meyer have explored the idea of the “free exercise of families,” i.e., a broader scope of legal self-definition by families, by analogy to the free exercise of religion. See David D. Meyer, *Self-Definition in the Constitution of Faith and Family*, 86 Minn. L. Rev. 791 (2002); Martha Minow, *The Free Exercise of Families*, 1991 U. Ill. L. Rev. 925.

corporate world and from the political realm the notions of mission statements and constitutions is the perception that family self-definition has become more crucial because a significant relationship between families and other institutions of civil society is askew. This perception mirrors a common theme in public rhetoric about an endangered social ecology: The family, the fundamental social unit, vitally supports and undergirds the institutions of civil society and of government, but in contemporary society, families are weakened and unable to play that role because those institutions undermine, rather than support, them.

The turn to family mission statements and family constitutions raises important questions about the value of analogy and about institutional design. A jurisprudence of associations would examine the premise that there are useful analogies between the life of families and the life of organizations and associations. This article has looked at claims that basic concepts about the organizational life of a corporation or a polity translate into the domain of the family. One could pose similar questions about analogies between the family and other associations, such as religious institutions and various voluntary associations. How are families similar to and different from other forms of associations?

Parallel to the argument that families are “seedbeds of civic virtue”—an important place in which persons develop into capable, self-governing members of society—is the argument that other institutions of civil society are also “seedbeds.” But just as there is concern that civil and social health are endangered by the current condition of families, so too are there warnings that other institutions of civil society need renewal. A striking feature of much of the literature on civil society and associations is its relative inattention to families as associations. So, too, literature about families often does not adequately situate them within the broader civil society. A jurisprudence of associations would take up those tasks.

In a good society, or in a new constitutional order, what sorts of relationships exist between families and other associations? Rhetoric about families as the most “basic,” “fundamental,” or “foundational” unit of society, generative of the social capital that nurtures social and political life, invites questions about the division of labor between families and other associations. What are the functions of the various components of civil society? Where do they fit in what I have called the formative project of producing persons capable of personal and democratic self-government? The turn to draft family mission statements and constitutions implicitly recognizes that the functions of the family in contemporary society differ significantly from those of families in earlier eras. As a matter of institutional design, what are fruitful ways to envision the proper ordering of families and the other institutions of civil society? And, to raise a final concern, what are the responsibilities of government? A jurisprudence of associations would also consider the division of labor between the domain of civil society and the domain of the political. To return to the opening epigraph of this article, if families are urged to adopt a constitution of daily

family life, then how do these constitutions, writ small, fit into a broader constitutional order, writ large?

Notes & Observations